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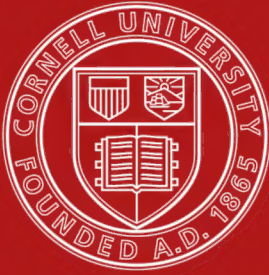
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# AMERICAN ELOQUENCE:

A Collection of

## SPEECHES AND ADDRESSES,

BY THE MOST EMINENT

## ORATORS OF AMERICA;

WITH BIOGRAPHICAL SKETCHES AND ILLUSTRATIVE NOTES,

By FRANK MOORE.

“There were Gyants in the earth in those dayes . . . . . mightie men,  
which were of olde, men of renowne.”

*Illustrated with Fourteen Portraits engraved on Steel.*

IN TWO VOLUMES.

VOL. I.

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## P R E F A C E .

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THE design of the present work is to furnish a convenient and popular Library Edition of the most celebrated Speeches and Addresses, forensic and parliamentary, of the principal Orators and Statesmen of America. It contains many which have never before been included in any collection; and heretofore inaccessible to the student and general reader. As far as attainable, specimens of the eloquence of the Continental Congress have been given, which fully illustrate the principles and portray the sufferings of the Revolutionary Period. Many entire speeches from the debates in Congress, since the year 1789, under the present organization of the Government, will also be found in this work. Selections from the earnest and able discussions in the State Conventions of the principles involved in the adoption of the Federal Constitution, also form a considerable portion of the work; and thus render it valuable as a means of acquiring an understanding of that important instrument.

The biographical sketches, preceding the selections from the works of each orator, are intended to present a brief outline of their lives and public services, the limited space allowed for that portion of the work precluding more extended notices. The analytical index attached to the work may render it generally useful as a book of reference.

The want of a work of this kind is too obvious to make any apology necessary for its publication at the present time. Should its success warrant such a course, another series, embracing the MORE RECENT AND LIVING ORATORS, prepared upon the same plan, will be offered to the public.

In closing, the Editor acknowledges his obligations to the numerous individuals from whom he has received valuable assistance, and especially to his brother, George H. Moore; to Mrs. Laura Wolcott Gibbs, for permission to copy the miniature of Alexander Hamilton, painted by her, and now in her possession; to Dr. John W. Francis, for the extension of his usual courtesies; to Mr. Henry T. Tuckerman, for valuable suggestions; to Mr. William Hunter, of the State Department, Washington, for the material contained in the sketch of his father's life; to the Libraries of the New York Historical Society, the Mercantile Library Association, the New York Society Library, and the Astor Library, as well as to the officers of these Institutions for the facility with which he has been enabled to make use of their valuable collections.

NEW YORK, August, 1st, 1857.

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*J. A. L.*





# AMERICAN ELOQUENCE.

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JAMES OTIS.

THE subject of this memoir, descended in the fifth generation from John Otis, who came over from England at a very early period of the Colony of Massachusetts Bay, and settled at Hingham, was born on the 5th of February, 1725, in the family mansion, at Great Marshes, now West Barnstable, Massachusetts. Nothing is known of his early youth. Pursuing his classical studies under the guidance of the Reverend Jonathan Russel, minister of the parish in which he lived, he entered Harvard College in June, 1739, and took his first degree in 1743. "During the first two years of his college life," says his biographer, "his natural ardor and vivacity made his society much courted by the elder students, and engaged him more in amusement than in study; but he changed his course in the junior year, and began thenceforward to give indications of great talent and power of application." The only record of his having taken any part in the usual collegiate courses, is that of a syllogistic disputation, on receiving his first degree.

At college, excepting his two first years, he was serious in his disposition and steady in the prosecution of his studies. When he came home during the vacations, being so devoted to his books, he was seldom seen; and the near neighbors to his father's dwelling would sometimes only remark his return after he had been at home a fortnight. Though enveloped and marked with some of the gravity and abstraction natural to severe application, he would occasionally discover the wit and humor which formed, afterwards, striking ingredients in his character. A small party of young people being assembled one day at his father's house, when he was at home during a college vacation, he had taken a slight part in their sports, when, after much persuasion, they induced him to play a country dance for them with his violin, on which instrument he then practised a little. The set was made up, and after they were fairly engaged, he suddenly stopped, and holding up his fiddle and bow, exclaimed, "So Orpheus fiddled, and so danced the brutes!" and then tossing the instrument aside, rushed into the garden, followed by the disappointed revellers, who were obliged to convert their intended dance into a frolicsome chase after the fugitive musician.

It was the intention of Mr. Otis to qualify himself for the practice of law, but he did not engage in the appropriate studies for that purpose immediately on leaving college. He wisely devoted nearly two years to the pursuits of general literature and science, intending thereby to establish broad and deep the foundations of his professional studies. In 1745 he commenced the study of the law, in the office of Jeremiah Gridley, at that time the most eminent lawyer in the province; and on completing those studies, he removed to Plymouth, and practised there during the years 1748 and 1749. Finding the "narrow range of country business" unsuited to his powers, he returned to Boston, where he soon rose to the highest position in his profession, being often called upon from other colonies and distant provinces for legal assistance and advice.

Through all his professional engagements, he still retained his taste for literature. In 1760, he published "The Rudiments of Latin Prosody, with a Dissertation on Letters, and the Principles of Harmony, in Poetic and Prosaic Composition, collected from the best Writers." He also composed a similar work on Greek Prosody, which was never published, but perished with all the rest of his papers.

The important events preceding and connected with the American Revolution, attracted the attention of Mr. Otis. On the death of George the Second, in 1760, his grandson reached the throne. The conquest of Canada was completed, and rumors were widely spread that the colonies were to be deprived of their charters and formed into royal governments. The new king issued orders that enabled his officers of the revenue to compel the sheriffs and constables of the provinces to search for goods which it was supposed had not paid the taxes imposed by Parliament. The good will of the colonists was wanted no longer to advance the prosecution of the war, and *Writs of Assistance* were undertaken through the influence of royal governors and some other interested friends of the Crown. The first application for those writs was made at Salem, Massachusetts. Stephen Sewall,\* who was the Chief Justice of the Superior Court, expressed great doubt of the legality of such writs, and of the authority of the court to grant them. The other judges would not favor it; and as it was an application of the Crown, that could not be dismissed without a hearing, it was postponed to the next term of the court, to be holden at Boston, in February, 1761. The probable result of this question caused great anxiety among the mercantile portion of the community. The merchants applied to Benjamin Pratt,† to undertake their cause, but he declined, being about to leave Boston for New York, of which province he had been appointed Chief Justice. They then solicited Otis, and Oxenbridge Thacher,‡ both of whom engaged to make their defence.

The arguments in this important case, were heard in the Council Chamber of the old Town House in Boston. Chief Justice Sewall having died, Lieut. Gov. Hutchinson had been appointed as his successor, and before him the case was opened, by Mr. Gridley,§ Otis's veteran law teacher, then Attorney General. He was followed by Mr. Thacher, with great ingenuity and ability, on the side of the merchants. "But," in the language of President Adams, "Otis was a flame

\* Stephen Sewall was the son of Major Samuel Sewall, of Salem, Mass. He was born in December, 1702, and graduated at Harvard College, in 1721. In 1728 he was chosen tutor in the College, and occupied that position until 1739, when he was called to take a seat on the Bench of the Superior Court. On the death of Chief Justice Dudley, in 1752, he was appointed to succeed him, though not the senior judge. He was distinguished for his honor, integrity, moderation, and great benevolence. He died in December, 1760, and the loss of this impartial, high-minded magistrate, at that critical period, was rightly esteemed a great public misfortune.

† Mr. Pratt affords a striking example how strong talent and energy of mind may raise one from a humble lot, and make even calamity the foundation of prosperity. He was bred a mechanic, and met with a serious injury that prevented him from pursuing his occupation. He turned his mind to study, entered Harvard College, and took his first degree in 1737. He studied law, and rose to great distinction at the bar. Through the friendship of Governor Pownall, he was made Chief Justice of New York, in 1761. A cause of great difficulty, which had been many years depending, being brought up soon after he had taken his seat, gave him an opportunity of displaying the depth and acuteness of his intellect, and the soundness of his judgment, and secured for him at once the public respect and confidence. He wrote some political essays on the topics of the day; and a few remaining fragments in verse of his composition, a specimen of which is preserved in Knapp's Biography, prove that he possessed both taste and talent for poetry. He presided over the Courts of New York but two years, dying in 1763, at the age of fifty-five.—*Tudor*.

‡ Mr. Thacher was at that time one of the heads of the bar in Boston; was a fine scholar, and possessed of much general learning. He received his degree at Harvard College, in 1738. Unassuming and affable in his deportment, of strict morality, punctual in his religious duties, and with sectarian attachments, that made him, like a large majority of the people around him, look with jealousy and enmity on the meditated encroachments of the English hierarchy; he was in all these respects fitted to be popular. To these qualities he joined the purest and most ardent patriotism, and a quick perception of those in power. His opposition gave the government great uneasiness; his disposition and habits secured public confidence; his moderation, learning, and ability, gave weight to his opinions, and prevented him from being considered as under the influence of others. John Adams says, the advocates of the Crown "hated him worse than they did James Otis or Samuel Adams." Thacher published some essays on the subject of an alteration proposed by Lieutenant Governor Hutchinson relative to the value of gold and silver; also, a pamphlet against the policy of the Navigation Act, and the Acts of Trade, entitled, "*The Sentiments of a British American*." He died, of a pulmonary complaint, in 1765.

§ Mr. Gridley was one of the principal lawyers and civilians of this time. He took his degree at Harvard College, in 1725. He came to Boston as an assistant in the Grammar School, for some time preached occasionally; but turning his attention to the law, he soon rose to distinction in the profession. He set on foot a weekly journal, in 1732, called the *Re-nersal*, in which he wrote on various literary as well as political subjects; but it lasted only one year. He was a Whig in politics, and as a representative from Brookline, in the General Court, opposed the measures of the ministry. He was



of fire; with a promptitude of classical allusions, a depth of research, a rapid summary of historical events and dates, a profusion of legal authorities, a prophetic glance of his eyes into futurity, and a rapid torrent of impetuous eloquence, he hurried away all before him. American independence was then and there born. The seeds of patriots and heroes, to defend the *Non sine Diis animosus infans*,\* to defend the vigorous youth, were then and there sown. Every man of an immense crowded audience appeared to me to go away as I did, ready to take arms against Writs of Assistance. Then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born. In fifteen years, i. e. in 1776, he grew up to manhood and declared himself free." The principles Otis educed and elaborated with such profound learning, humor and pathos, could not be subverted, and the court at the close of his speech adjourned for consideration: Chief Justice Hutchinson, at the end of the term, giving the opinion, "The Court has considered the subject of Writs of Assistance, and can see no foundation for such a writ; but as the practice in England is not known, it has been thought best to continue the question to the next term, that in the mean time opportunity may be given to know the result."†

It was on the occasion of this masterly performance, when Otis stood forth as the bold and brilliant advocate of colonial rights, that he became famous. Although he had never before interfered in public affairs, his exertions on this single occasion secured him a commanding popularity with the friends of their country, and the terror and vengeance of her enemies; neither of which ever deserted him. In May, 1761, he was chosen to the Legislature, in which assembly he wielded immense power. His superiority as a legislator was everywhere acknowledged, and in all important measures he was foremost. In 1762 he published the "Vindication of the Conduct of the House of Representatives of the Province of Massachusetts Bay," &c., a work in which many volumes are concentrated. "Look over the Declarations of Rights and Wrongs issued by Congress in 1774," says John Adams. "Look into the Declaration of Independence, in 1776. Look into the Writings of Dr. Price and Dr. Priestly. Look into all the French Constitutions of government; and to cap the climax, look into Mr. Thomas Paine's Common Sense, Crisis, and Rights of Man; and what can you find that is not to be found in solid substance in this Vindication of the House of Representatives?" Mr. Otis was a member of the Congress which met at New York in the month of October in the year 1765. During the same year he published "A Vindication of the British Colonies," &c. Also, "Considerations on behalf of the Colonists, in a Letter to a Noble Lord." It was written with spirit and ability, and was the last work that appeared from his pen. On the return of Otis to the colonial legislature of 1766, he was appointed chairman of a committee to reply to a message of Governor Bernard, in which that officer had shown some resentment. In the answer to the message they say, "It appears to us an undue exercise of the prerogative to lay us under the necessity either of silence, or of being thought out of season in making a reply. Your Excellency says, that these times have been more difficult than they need have been; which is also the opinion of this House. Those who have made them so, have reason to regret the injury they have done to a sincere and honest people." It need not be said that Otis had neither respect nor fear of the royal governor. The same year Mr. Otis brought before the legislature a proposition "for opening a gallery of the House for such as wished to hear the debates;" thus aiding in the establishment of one of the most important principles of representative government, the publicity of legislative proceedings. Until this time it had been customary for the legislative assemblies to sit with closed doors, and it was with great reluctance that the change was made.

During the summer of the year 1767, Parliament passed an act "to raise a revenue in

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however, appointed Attorney-General, when Mr. Trowbridge was promoted to the Bench, and in that capacity was obliged to defend the famous "Writs of Assistance," in which he was opposed and wholly confuted by his pupil, Otis. He was a Colonel of the Militia, and Grand Master of the Free Masons, and belonged to some other charitable associations. He died in Boston, September 7th, 1767.—*Elliot*.

\* This motto was furnished by Sir William Jones for the *Alliance Medal*, struck in Paris to commemorate the alliance between France and America.

† "When the next term came," says Mr. Adams, "no judgment was pronounced,—nothing was said about Writs of Assistance."

America," imposing duties on glass, paper, painters' colors and tea; and by virtue of another act, the king was empowered to put the customs and other duties in America, and the execution of the laws relating to trade in the colonies, under the management of resident commissioners. The news of the passage of these bills revived the popular excitement which arose at the time of the Stamp Act, which had died away on its repeal. A town meeting was held in Boston, at which Mr. Otis appeared, "contrary to his usual practice, as the adviser of cautious and moderate proceedings," for which moderation he was charged with being a friend to the act for appointing commissioners. To this charge he replied, "If the name and office of Commissioner General imports no more than that of a Surveyor General, no man of sense will contend about a name. The tax—the tax is undoubtedly, at present, the apparent matter of grievance." At this meeting resolutions were passed to encourage the manufactures of the province, and to abstain from the purchase of articles on which duties were imposed, thus deceiving Bernard, the governor, by the quiet character of their proceedings, which were represented as "the last efforts of an expiring faction," but at the same time becoming more firm and decided.

To all the movements of the king and ministry to abridge the liberties of the colonists, Otis maintained a decided and fearless opposition. Bold and daring in the expression of his principles and opinions, he sometimes gave utterance to unguarded epithets, but never employed his gift of irony and sarcasm in a spirit of hatred towards the masses of mankind. Owing to a severe refutation of some strictures upon him, published in the public papers in 1769, he was attacked by one John Robinson, a commissioner of the customs, in a coffee-house in Boston, and in a general affray was cruelly wounded; from the effects of which he never recovered. His wounds did not prove mortal, but his reason was shattered, and his great usefulness to his country destroyed. He gained heavy damages for the assault; but in an interval of returning reason he forgave his destroyer and remitted the judgment. He lived until May 28, 1783. On that day, during a heavy thunder-storm, he, with a greater part of the family with whom he resided, had entered the house to wait until the shower should have passed. Otis, with his cane in one hand, stood against the part of a door which opened into the front entry, and was in the act of telling the assembled group a story, when an explosion took place, which seemed to shake the solid earth, and he fell without a struggle, or an utterance, instantaneously dead. He had often expressed a desire to die as he did. In one of his lucid intervals, a few weeks previous to his death, he said to his sister: "I hope, when God Almighty, in his righteous providence, shall take me out of time into eternity, that it will be by a flash of lightning." He lived to see the Independence of the Colonies, but never fully to enjoy it.

"When the glorious work which he begun,  
Shall stand the most complete beneath the sun;  
When peace shall come to crown the grand design,  
His eyes shall live to see the work Divine—  
The heavens shall then his generous 'spirit claim  
In storms as loud as his immortal fame!'  
Hark! the deep thunders echo round the skies!  
On wings of flame the eternal errand flies;  
One chosen, charitable bolt is sped—  
And Otis mingles with the glorious dead."—*Danvers.*

#### THE WRITS OF ASSISTANCE.

MAY IT PLEASE YOUR HONORS: I was desired by one of the Court to look into the books, and consider the question now before them concerning Writs of Assistance. I have accordingly considered it, and now appear not only in obedience to your order, but likewise in behalf of the inhabitants of this town, who have presented another petition, and out of regard to the liberties of the subject. And I take this opportunity to declare, that whether

under a fee or not, (for in such a cause as this I despise a fee,) I will to my dying day oppose with all the powers and faculties God has given me, all such instruments of slavery on the one hand, and villany on the other, as this writ of assistance is.

It appears to me the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book. I

must therefore beg your honors' patience and attention to the whole range of an argument, that may perhaps appear uncommon in many things, as well as to points of learning that are more remote and unusual: that the whole tendency of my design may the more easily be perceived, the conclusions better descend, and the force of them be better felt. I shall not think much of my pains in this cause, as I engaged in it from principle. I was solicited to argue this cause as Advocate General; and because I would not, I have been charged with desertion from my office.\* To this charge I can give a very sufficient answer. I renounced that office, and I argue this cause from the same principle; and I argue it with the greater pleasure, as it is in favor of British liberty, at a time when we hear the greatest monarch upon earth declaring from his throne that he glories in the name of Briton, and that the privileges of his people are dearer to him than the most valuable prerogatives of his crown; and as it is in opposition to a kind of power, the exercise of which in former periods of history, cost one King of England his head, and another his throne. I have taken more pains in this cause than I ever will take again, although my engaging in this and another popular cause has raised much resentment. But I think I can sincerely declare, that I cheerfully submit myself to every odious name for conscience' sake; and from my soul I despise all those, whose guilt, malice, or folly has made them my foes. Let the consequences be what they will, I am determined to proceed. The only principles of public conduct, that are worthy of a gentleman or a man, are to sacrifice estate, ease, health, and applause, and even life, to the sacred calls of his country.

These manly sentiments, in private life, make the good citizen; in public life, the patriot and the hero. I do not say, that when brought to the test, I shall be invincible. I pray God I may never be brought to the melancholy trial, but if ever I should, it will be then known how far I can reduce to practice principles which I know to be founded in truth. In the mean time I will proceed to the subject of this writ.

Your honors will find in the old books concerning the office of a justice of the peace, precedents of general warrants to search suspected houses. But in more modern books, you will find only special warrants to search such and such houses, specially named, in which the complainant has before sworn that he suspects his goods are concealed; and will find it adjudged, that special warrants only are legal. In the same manner I rely on it, that the writ prayed for in this petition, being general, is illegal. It is a power that places the liberty of every man in the hands of every petty officer.

\* Otis had lately been occupying the office of Advocate General of the Crown, and had resigned because "he believed these writs to be illegal and tyrannical," and would not prostitute his office to the support of an oppressive act.

I say I admit that special writs of assistance, to search special places, may be granted to certain persons on oath; but I deny that the writ now prayed for can be granted, for I beg leave to make some observations on the writ itself, before I proceed to other acts of Parliament. In the first place, the writ is universal, being directed "to all and singular justices, sheriffs, constables, and all other officers and subjects;" so that, in short, it is directed to every subject in the king's dominions. Every one with this writ may be a tyrant; if this commission be legal, a tyrant in a legal manner, also, may control, imprison, or murder any one within the realm. In the next place, it is perpetual, there is no return. A man is accountable to no person for his doings. Every man may reign secure in his petty tyranny, and spread terror and desolation around him, until the trump of the archangel shall excite different emotions in his soul. In the third place, a person with this writ, in the daytime, may enter all houses, shops, &c., at will, and command all to assist him. Fourthly, by this writ, not only deputies, &c., but even their menial servants, are allowed to lord it over us. What is this but to have the curse of Canaan with a witness on us; to be the servant of servants, the most despicable of God's creation? Now one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege. Custom-house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and every thing in their way: and whether they break through malice or revenge, no man, no court can inquire. Bare suspicion without oath is sufficient. This wanton exercise of this power is not a chimerical suggestion of a heated brain. I will mention some facts. Mr. Pew had one of these writs, and when Mr. Ware succeeded him, he endorsed this writ over to Mr. Ware: so that, these writs are negotiable from one officer to another; and so your honors have no opportunity of judging the persons to whom this vast power is delegated. Another instance is this: Mr. Justice Walley had called this same Mr. Ware before him, by a constable, to answer for a breach of the sabbath-day acts, or that of profane swearing. As soon as he had finished, Mr. Ware asked him if he had done. He replied, Yes. Well then, said Mr. Ware, I will show you a little of my power. I command you to permit me to search your house for uncustomed goods; and went on to search the house from the garret to the cellar; and then served the constable in the same manner! But to show another absurdity in this writ, if it should be established, I insist upon it every person, by the 14th Charles Second, has this power as well as the custom-house officers. The words are, "it shall be

lawful for any person or persons authorized, &c." What a scene does this open! Every man prompted by revenge, ill-humor, or wantonness to inspect the inside of his neighbor's house, may get a writ of assistance. Others will ask it from self-defence; one arbitrary exertion will provoke another, until society be involved in tumult and in blood.

The summary of this speech can be best, and can now be only given in the words of John Adams, who divides it into five parts:

1. "He began with an exordium, containing an apology for his resignation of the office of Advocate General in the Court of Admiralty; and for his appearance in that cause in opposition to the Crown, and in favor of the town of Boston, and the merchants of Boston and Salem.

2. "A dissertation on the rights of man in a state of nature. He asserted that every man, merely natural, was an independent sovereign, subject to no law but the law written on his heart, and revealed to him by his Maker, in the constitution of his nature, and the inspiration of his understanding and his conscience. His right to his life, his liberty, no created being could rightfully contest. Nor was his right to his property less incontestable. The club that he had snapped from a tree, for a staff or for defence, was his own. His bow and arrow were his own; if by a pebble he had killed a partridge or a squirrel, it was his own. No creature, man or beast, had a right to take it from him. If he had taken an eel, or a smelt, or a sculpion, it was his property. In short, he sported upon this topic with so much wit and humor, and at the same time with so much indisputable truth and reason, that he was not less entertaining than instructive. He asserted that these rights were inherent and inalienable. That they never could be surrendered or alienated, but by idiots or madmen, and all the acts of idiots and lunatics were void, and not obligatory, by all the laws of God and man. Nor were the poor negroes forgotten. Not a Quaker in Philadelphia, or Mr. Jefferson in Virginia, ever asserted the rights of negroes in stronger terms. Young as I was, and ignorant as I was, I shuddered at the doctrine he taught; and I have all my life shuddered, and still shudder, at the consequences that may be drawn from such premises. Shall we say, that the rights of masters and servants clash, and can be decided only by force? I adore the idea of gradual abolitions! but who shall decide how fast or how slowly these abolitions shall be made?

3. "From individual independence he proceeded to association. If it was inconsistent with the dignity of human nature to say that men were gregarious animals, like wild geese, it surely could offend no delicacy to say they were social animals by nature; that there were natural sympathies, and above all, the sweet attraction of the sexes, which must soon draw

them together in little groups, and by degrees in larger congregations, for mutual assistance and defence. And this must have happened before any formal covenant, by express words or signs, was concluded. When general councils and deliberations commenced, the objects could be no other than the mutual defence and security of every individual for his life, his liberty, and his property. To suppose them to have surrendered these in any other way than by equal rules and general consent, was to suppose them idiots or madmen, whose acts were never binding. To suppose them surprised by fraud, or compelled by force into any other compact, such fraud and such force could confer no obligation. Every man had a right to trample it under foot whenever he pleased. In short, he asserted these rights to be derived only from nature, and the author of nature; that they were inherent, inalienable, and indefeasible by any laws, pacts, contracts, covenants, or stipulations, which man could devise.

4. "These principles and these rights were wrought into the English constitution, as fundamental laws. And under this head he went back to the old Saxon laws, and to Magna Charta, and the fifty confirmations of it in Parliament, and the executions ordained against the violators of it, and the national vengeance which had been taken on them from time to time, down to the Jameses and Charleses; and to the position of rights and the bill of rights, and the revolution. He asserted, that the security of these rights to life, liberty and property, had been the object of all those struggles against arbitrary power, temporal and spiritual, civil and political, military and ecclesiastical, in every age. He asserted, that our ancestors, as British subjects, and we, their descendants, as British subjects, were entitled to all those rights, by the British constitution, as well as by the law of nature, and our provincial character, as much as any inhabitant of London or Bristol, or any part of England; and were not to be cheated out of them by any phantom of 'virtual representation,' or any other fiction of law or politics, or any monkish trick of deceit and hypocrisy.

5. "He then examined the acts of trade, one by one, and demonstrated, that if they were considered as revenue laws, they destroyed all our security of property, liberty, and life, every right of nature, and the English constitution, and the charter of the province. Here he considered the distinction between 'external and internal taxes,' at that time a popular and commonplace distinction. But he asserted that there was no such distinction in theory, or upon any principle but 'necessity.' The necessity that the commerce of the empire should be under one direction, was obvious. The Americans had been so sensible of this necessity, that they had connived at the distinction between external and internal taxes, and had submitted to the acts of trade as regulations of commerce, but never as taxations, or

revenue laws. Nor had the British government, till now, ever dared to attempt to enforce them as taxations or revenue laws. They had lain dormant in that character for a century almost. The navigation act he allowed to be binding upon us, because we had consented to it by our own legislature. Here he gave a history of the navigation act of the first of

Charles II., a plagiarism from Oliver Cromwell. This act had lain dormant for fifteen years. In 1675, after repeated letters and orders from the king, Governor Leverett very candidly informs his majesty that the law had not been executed, because it was thought unconstitutional; Parliament not having authority over us."

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### THE STUDY OF THE LAW.

I shall always lament that I did not take a year or two further for more general inquiries in the arts and sciences before I sat down to the laborious study of the laws of my country. Early and short clerkships and a premature rushing into practice, without a competent knowledge in the theory of law, have blasted the hopes of (and ruined the expectations formed by the parents of) most of the students in the profession, who have fallen within my observation for these ten or fifteen years past.

I hold it to be of vast importance that a young man should be able to make some eclat at his opening, which it is in vain to expect from one under twenty-five: missing of this is very apt to discourage and dispirit him, and what is of worse consequence, may prevent the application of clients ever after. It has been observed before I was born, if a man don't obtain a character in any profession soon after his first appearance, he hardly will ever obtain one. The bulk of mankind, I need not inform you, who have conversed with, studied and found many of them out, are a gaping crew, and like little children and all other gazing creatures, won't look long upon one object which gives them pleasure; much less will they seek for entertainment where they have been twice or thrice disappointed. The late eminent Mr. John Reed, who, by some, has been perhaps justly esteemed the greatest common lawyer this continent ever saw, was, you know, many years a clergyman, and had attained the age of forty before he began the practice, if not before

he began the study, of the law. Sir Peter King, formerly Lord High Chancellor of England, kept a grocer's shop till he was turned of thirty, then fell into an acquaintance with the immortal John Locke, who discovered a genius in him, advised him to books and assisted in his education; after which he took to the study of the common law, and finally attained to the highest place to which his royal master could advance a lawyer. I think I have been told the Lord Chief Justice Pemberton, or some one of the Chief Justices of England, was a bankrupt, and in the Fleet prison for debt, before he even dreamed of being a lawyer. I mention these instances, not as arguments to prove it would be most eligible to stay till thirty or forty, before a man begins the study of a profession he is to live by; but this inference I think very fairly follows, that those gentlemen availed themselves much of the ripeness of their judgments when they began this study, and made much swifter progress than a young man of twenty with all the genius in the world could do; or they would have been approaching superannuation before they would be equipped with a sufficient degree of learning once to give hope for the success they found, and then such hope would vanish, unless they could get a new lease of life and understanding.\*

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\* This extract is taken from a letter addressed by James Otis to his father, in reference to the legal education of his younger brother, Samuel Allyne Otis, who, in later life, became Secretary of the Senate of the United States.

## PATRICK HENRY.

( THIS distinguished "orator of nature," was born at Studley, in the county of Hanover, and Colony of Virginia. ) His father emigrated to America, from Aberdeen, Scotland, in quest of fortune, sometime prior to 1730; and his mother, who belonged to the family of Winstons, was a native of the county in which he was born. ( On the maternal side, he seems to have belonged to an oratorical race. His uncle, William Winston, is said to have been highly gifted with that peculiar cast of eloquence for which Mr. Henry became afterwards so justly celebrated. ) An anecdote of this gentleman's rhetorical powers is recorded by the eloquent biographer of Mr. Henry. During the French and Indian war, soon after the defeat of the unfortunate Braddock, when the militia were marched to the frontiers of Virginia against the enemy, William Winston was the lieutenant of a company. The men, who were indifferently clothed, without tents, and exposed to the rigor and inclemency of the weather, discovered great aversion to the service, and were anxious and even clamorous to return to their families; when Winston, mounting a stump, addressed them with such keenness of invective, and declaimed with such force of eloquence, on liberty and patriotism, that when he concluded, the general cry was, "Let us march on; lead us against the enemy!" and they were now willing and anxious to encounter, all those difficulties and dangers which, but a few moments before, had almost produced a mutiny.

( The youth of Mr. Henry gave no presage of his future greatness. He was idle and indolent; playing truant from his school, and spending the greater portion of his time in the sports of the field; often sitting whole days upon the margin of some stream, waiting for a bite, or even "one glorious nibble." The lamentable effects of this idleness clung to him through life. ) After passing one year as merchant's clerk, young Henry, at the age of sixteen, was established in trade by his father, but "through laziness, the love of music, the charms of the chase, and a readiness to trust every one," he soon became bankrupt. One advantage, however, he derived from this experiment; it was in the study of human nature. All his customers underwent his scrutiny, not with reference to their integrity or solvency, but in relation to the structure of their minds and opinions. In this school, it is the opinion of his biographer, Mr. Henry was prepared for his future life. "For those continual efforts to render himself intelligible to his plain and unlettered hearers, on subjects entirely new to them, taught him that clear and simple style which forms the best vehicle of thought to a popular assembly; while his attempts to interest and affect them, in order that he might hear from them the echo of nature's voice, instructed him in those topics of persuasion by which men are most certainly to be moved, and in the kind of imagery and structure of language which were the best fitted to strike and agitate their hearts."

At the early age of eighteen, Mr. Henry was married to Miss Shelton, the daughter of a poor but honest farmer in the neighborhood of his birthplace. The young couple settled on a small farm, and "with the assistance of one or two slaves, Mr. Henry had to delve the earth for his subsistence." His want of agricultural skill and natural aversion to all kinds of systematic labor, closed his career as a farmer in two years, when he again commenced and again failed in









*J. Henry*



mercantile pursuits. Unsuccessful in every thing he had attempted to procure himself and his family subsistence, he, as a last effort, determined to make a trial of the law. To the study of that profession, "which is said to require the lucubrations of twenty years, Mr. Henry devoted not more than six weeks;" and at the age of twenty-four he was admitted to the bar. His practice for the first three or four years yielded him but a very scanty return, during which time he performed the duties of an assistant to his father-in-law at a country inn.

The celebrated controversy,\* in 1763, between the clergy and the legislature of Virginia, touching the stipend of the former, was the occasion on which Mr. Henry's genius first broke forth. "On this first trial of his strength," says Mr. Wirt, "he rose very awkwardly, and faltered much in his exordium. The people hung their heads at so unpromising a commencement; the clergy were observed to exchange sly looks with each other; and his father is described as having almost sunk with confusion from his seat. But these feelings were of short duration, and soon gave place to others, of a very different character. For, now were these wonderful faculties which he possessed for the first time developed; and now was first witnessed that mysterious and almost supernatural transformation of appearance, which the fire of his own eloquence never failed to work in him. For, as his mind rolled along and began to glow from its own action, all the *æuvies* of the clown seemed to shed themselves spontaneously. His attitude, by degrees, became erect and lofty. The spirit of his genius awakened all his features. His countenance shone with a nobleness and grandeur which it had never before exhibited. There was a lightning in his eyes which seemed to rive the spectator. His action became graceful, bold, and commanding; and in the tones of his voice, but more especially in his emphasis, there was a peculiar charm, a magic, of which any one who ever heard him will speak as soon as he is named, but of which no one can give any adequate description. They can only say that it struck upon the ear and upon the heart, *in a manner which language cannot tell*. Add to all these his wonder-working fancy, and the peculiar phraseology in which he clothed its images; for he painted to the heart with a force that almost petrified it. In the language of those who heard him on this occasion, 'he made their blood run cold, and their hair to rise on end.'

"It will not be difficult for any one who ever heard this most extraordinary man, to believe the whole account of this transaction which is given by his surviving hearers; and from their account, the court-house of Hanover County must have exhibited, on this occasion, a scene as picturesque as has ever been witnessed in real life. They say that the people, whose countenance had fallen as he arose, had heard but a very few sentences before they began to look up; then to look at each other with surprise, as if doubting the evidence of their own senses; then, attracted by some strong gesture, struck by some majestic attitude, fascinated by the spell of his eye, the charm of his emphasis, and the varied and commanding expression of his countenance, they could look away no more. In less than twenty minutes they might be seen in every part of the house, on every bench, in every window, stooping forward from their stands, in death-like silence; their features fixed in amazement and awe; all their senses listening and riveted upon the speaker, as if to catch the last strain of some heavenly visitant. The mockery of the clergy was soon turned into alarm; their triumph into confusion and despair; and at one burst of his rapid and overwhelming invective, they fled from the bench in precipitation and terror. As for the father, such was his surprise, such his amazement, such his rapture, that, forgetting where he was, and the character which he was filling, tears of ecstasy streamed down his cheeks, without the power or inclination to repress them. The jury seem to have been completely bewildered; for, thoughtless even of the admitted right of the plaintiff, they had scarcely left the bar when they returned with a verdict of *one penny damages*. A motion was made for a new trial; but the court, too, had now lost the equipoise of their judgment, and overruled the motion by a unanimous vote. The verdict and judgment overruling the motion, were followed by redoubled acclamations from within and without the house. The people, who had with difficulty kept their hands off their champion, from the moment of closing his harangue, no sooner saw the fate of the cause finally sealed, than they seized him at the bar, and in spite of his own exertions, and the continued cry of 'order' from the sheriffs and the court, they bore him out of

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\* The points in this controversy are lucidly laid down in Wirt's *Life of Henry*.

the court-house, and raising him on their shoulders, carried him about the yard, in a kind of electioneering triumph."

His success in the "parson's cause" introduced him at once to an extensive practice; but he never could confine himself to the arduous studies necessary for a thorough knowledge of the law: the consequence was, on questions merely legal his inferiors in talents frequently embarrassed him, and he was required to use all the resources of his master-mind to maintain the position he had reached. In 1765, as a member of the House of Burgesses, Mr. Henry introduced his resolutions against the Stamp Act, which proved the opening of the American Revolution in the colony of Virginia. It was in the midst of the debate upon those resolutions, that he "exclaimed, in a voice of thunder and with the look of a god, 'Cæsar had his Brutus--Charles the First his Cromwell--and George the Third--('Treason!' cried the Speaker: 'treason! treason!' echoed from every part of the house. Henry faltered not for an instant, but rising to a loftier attitude, and fixing on the Speaker an eye of the most determined fire, finished his sentence with the firmest emphasis)--*may profit by their example*. If *this* be treason, make the most of it."\* After passing several years successfully upon the legislative floor, Mr. Henry returned to the practice of his profession.

On the 4th of September, 1774, the first Congress met in Carpenter's Hall, at Philadelphia. This assembly was composed of the most eminent men of the several colonies, on the wisdom of whose councils was staked the liberties of the colonists and their posterity. The first meeting is described as "awfully solemn. The object which had called them together was of incalculable magnitude." After the organization, in the midst of a deep and death-like silence, every member reluctant to open a business so fearfully momentous, "Mr. Henry rose slowly, as if borne down by the weight of the subject, and, after faltering, according to his habit, through a most impressive exordium, he launched gradually into a recital of the colonial wrongs. Rising, as he advanced, with the grandeur of his subject, and glowing at length with all the majesty and expectation of the occasion, his speech seemed more than that of mortal man. There was no rant, no rhapsody, no labor of the understanding, no straining of the voice, no confusion of the utterance. His countenance was erect, his eye steady, his action noble, his enunciation clear and firm, his mind poised on its centre, his views of his subject comprehensive and great, and his imagination corruscating with a magnificence and a variety which struck even that assembly with amazement and awe. He sat down amid murmurs of astonishment and applause; and as he had been before proclaimed the greatest orator of Virginia, he was now, on every hand, admitted to be the first orator of America." No report of this speech has been preserved. That Congress adjourned in October, and Mr. Henry returned to his home. On the 20th of March following (1775), the Virginia Convention, which had met the previous year at Williamsburgh, then the capital of the State, convened at Richmond. Of this body Mr. Henry was a member. Although the colonies were then laboring under severe grievances, and at the same time were insisting with great firmness upon their constitutional rights, yet they gave the most explicit and solemn pledge of their faith and true allegiance to His Majesty King George the Third, avowed to support him with their lives and fortunes, and were ardent in their wishes for a return of that friendly intercourse from which the colonies had derived so much benefit. These were the sentiments held by those eminent statesmen and patriots on the opening of that convention; but with Mr. Henry it was different. In his judgment, all hopes of a reconciliation were gone. Firm in this opinion, he introduced his celebrated resolutions advocating preparation for a military defence of the colony. Those resolutions he sustained in a powerful speech, and they were adopted; after which a committee, of which Mr. Henry and George Washington were members, was appointed to prepare and report a plan to carry into effect the meaning of the resolutions. After the report was made and the plan adopted, the convention adjourned.

On the 20th of April, 1775, in the dead of the night, Lord Dunmore sent one of his naval captains, with a body of marines, into the town of Williamsburgh, carried off twenty barrels of

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\* A very curious parallel to this scene occurred in the Legislature of Massachusetts, three years prior to this, on the occasion of the presentation of Otis's remonstrance against the governor and council's making or increasing establishments without the consent of the House. A thrilling account of those proceedings is given in Tudor's Life of James Otis.

powder from the public magazine, and placed them on board the armed schooner *Magdalen*, lying at anchor in James River. The people of the town on learning of the affair early the next morning, became highly exasperated; a considerable body of them taking up arms, determined to compel a restoration of the powder. The council convened, and addressed a letter to Lord Dunmore, asking for its return; but it was not until the 2d day of May, when Mr. Henry, having convened the Independent company of Hanover, by request, addressed them, and being appointed their leader, marched against his lordship, and obtained "three hundred and thirty pounds," the estimated value of the powder. "Thus, the same man, whose genius had in the year 1765 given the first political impulse to the Revolution, had now the additional honor of heading the first military movement in Virginia, in support of the same cause." On the meeting of the Virginia convention in 1776, after the *declaration of rights* was published, and a plan of government established, Mr. Henry was elected governor of the colony. His career in this office is not marked by any extraordinary operations of his own. Lord Dunmore had evacuated the territory of the colony, and the military operations against the British Crown, which had been carried on during the previous year, were brought to a close. In 1777, and again in 1778, Mr. Henry was re-elected to the office of governor; declining a third re-election in 1779, which had been tendered him by the Assembly.

The first wife of Mr. Henry having died in the year 1775, he sold the farm on which he had been residing in Hanover county, and purchased several thousand acres of valuable land in the county of *Henry*; a county which had been erected during his administration as governor; and which had taken its name from him, as did afterwards its neighboring county of *Patrick*. In 1777 he married Dorothea, the daughter of Mr. Nathaniel W. Dandridge, with whom he retired to his new estate; and there resumed the practice of the law, confining himself mainly to the duties of counsellor and advocate, and leaving the technical duties to the care of his junior associates. Shortly after the termination of Mr. Henry's office as governor, he was elected to the State Assembly, in which body he remained until the close of his active life; taking a prominent part in its proceedings, and distinguishing himself by his liberality of feeling and soundness of judgment, not less than by the superiority of his powers in debate. On the close of the Revolution, he proposed in the Assembly, that the loyalists who had left the State during the war, should be permitted to return. This proposition was resisted, but through the influence of Mr. Henry's "overwhelming eloquence," was finally adopted. In the same high-toned spirit he supported and carried, although vigorously opposed, a proposal for removing the restraints upon British commerce. "Why should we fetter commerce?" said he; "a man in chains droops and bows to the earth; his spirits are broken; but let him twist the fetters from his legs and he will stand upright. Fetter not Commerce, Sir; let her be as free as air. She will range the whole creation, and return on the wings of the four winds of heaven to bless the land with plenty."

In the year 1784, Mr. Henry introduced into the Assembly, a "bill for the encouragement of marriages with the Indians." The frontier settlements had been subject to the continual depredations of the Indians. Treaties were of no avail; and in this bill, Mr. Henry suggested, as a means to prevent these troubles, intermarriages of the whites and Indians; and held out pecuniary bounty, to be repeated at the birth of every child of such marriages; exemption from taxes, and the free use of an educational institution, to be established at the expense of the State. This bill was rejected. In November of the same year, Mr. Henry was again elected Governor of Virginia; in which office he remained until 1786, when he was compelled by poverty to resign his office, and again return to the practice of the law. However, he did not remain long out of public life. In 1788 he was a member of the convention of Virginia, which adopted the new federal constitution. In this Assembly he opposed the adoption; because, he contended, it consolidated the States into one government, thereby destroying their individual sovereignty. His speeches on this occasion surpassed all his former efforts; and they operated so powerfully that but a small majority voted for the new constitution.

Declining a re-election to the Assembly in 1791, Mr. Henry retired from public life. Four years after President Washington offered him the important station of Secretary of State. This he declined, preferring to remain in retirement. Again, in 1796, he was elected Governor of

the State; this he also declined. In the year 1797 his health began to fail, and those energies which had enabled him to withstand the power of Great Britain, and urge onward the glorious Revolution, existed no longer in their original force. The uncertainty of the political issues at this period bore sorely and heavily upon Mr. Henry's sinking spirits. The clash of opposing parties agonized his mind. He was alarmed at the hideous scenes of the revolution then enacting in France, and apprehensive that these scenes were about being enacted over again in his own country. "In a mind thus prepared," says his biographer, "the strong and animated resolutions of the Virginia Assembly in 1798, in relation to the alien and sedition laws, conjured up the most frightful visions of civil war, disunion, blood and anarchy; and under the impulse of these phantoms, to make what *he* considered a virtuous effort for his country, he presented himself in Charlotte county, as a candidate for the House of Delegates, at the spring election of 1799." On the day of the election, before the polls were opened, he addressed the people of the county to the following effect: "He told them that the late proceedings of the Virginia Assembly had filled him with apprehension and alarm; that they had planted thorns upon his pillow; that they had drawn him from that happy retirement which it had pleased a bountiful Providence to bestow, and in which he had hoped to pass, in quiet, the remainder of his days; that the State had quitted the sphere in which she had been placed by the constitution; and in daring to pronounce upon the validity of federal laws, had gone out of her jurisdiction in a manner not warranted by any authority, and in the highest degree alarming to every considerate man; that such opposition, on the part of Virginia, to the acts of the general government, *must* beget their enforcement by military power; that this would probably produce civil war; civil war, foreign alliances; and that foreign alliances must necessarily end in subjugation to the powers called in. He conjured the people to pause and consider well, before they rushed into such a desperate condition, from which there could be no retreat. He painted to their imaginations, Washington, at the head of a numerous and well-appointed army, inflicting upon them military execution: 'and where (he asked) are our resources to meet such a conflict? Where is the citizen of America who will dare to lift his hand against the father of his country?' A drunken man in the crowd threw up his arm, and exclaimed that 'he dared to do it.' 'No,' answered Mr. Henry, rising aloft in all his majesty: '*you dare not do it: in such a parricidal attempt, the steel would drop from your nerveless arm!*' Mr. Henry, proceeding in his address to the people, asked, 'whether the county of Charlotte would have any authority to dispute an obedience to the laws of Virginia; and he pronounced Virginia to be to the Union, what the county of Charlotte was to *her*.'

"Having denied the right of a State to decide upon the constitutionality of federal laws, he added, that perhaps it might be necessary to say something of the merits of the laws in question. His private opinion was, that they were '*good and proper*.' But, whatever might be their merits, it belonged to the people, who held the reins over the head of Congress, and to them alone, to say whether they were acceptable or otherwise, to Virginians; and that this must be done by way of petition. That Congress were as much our representatives as the Assembly, and had as good a right to our confidence. He had seen, with regret, the unlimited power over the purse and sword consigned to the general government; but that he had been overruled, and it was now necessary to submit to the constitutional exercise of that power. 'If,' said he, 'I am asked what is to be done, when a people feel themselves intolerably oppressed, my answer is ready: *Overturn the government*. But do not, I beseech you, carry matters to this length, without provocation. Wait at least until *some* infringement is made upon your rights, and which cannot otherwise be redressed; for if ever you recur to another change, you may bid adieu forever to representative government. You can never exchange the present government but for a monarchy. If the administration have done wrong, let us all go wrong together rather than split into factions, which must destroy that *union* upon which our existence hangs. Let us preserve our strength for the French, the English, the Germans, or whoever else shall dare to invade our territory, and not exhaust it in civil commotions and intestine wars.' He concluded, by declaring his design to exert himself in the endeavor to allay the heart-burnings and jealousies which had been fomented, in the State legislature; and he fervently prayed, if *he* was

deemed unworthy to effect it, that it might be reserved to some other and abler hand, to extend this blessing over the community.”\*

This was the last effort of Mr. Henry’s eloquence. The polls were opened after he had concluded this speech, and he was elected: but he never took his seat. His health had been declining gradually for two years, when, on the sixth day of June, 1799, he died, full of honors—as a statesman, orator and patriot, unsurpassed and uneclipsed.

#### THE FEDERAL CONSTITUTION.†

The Preamble and the two first sections of the first article of the Constitution being under consideration, Mr. Henry thus addressed the convention:‡

MR. CHAIRMAN: The public mind, as well as my own, is extremely uneasy at the proposed change of government. Give me leave to form one of the number of those, who wish to be thoroughly acquainted with the reasons of this perilous and uneasy situation, and why we are brought hither to decide on this great national question. I consider myself as the servant of the people of this commonwealth, as a sentinel over their rights, liberty, and happiness. I represent their feelings when I say, that they are exceedingly uneasy, being brought from that state of full security, which they enjoy, to

the present delusive appearance of things. Before the meeting of the late Federal convention at Philadelphia, a general peace, and an universal tranquillity prevailed in this country, and the minds of our citizens were at perfect repose; but since that period, they are exceedingly uneasy and disquieted. When I wished for an appointment to this convention, my mind was extremely agitated for the situation of public affairs. I conceive the republic to be in extreme danger. If our situation be thus uneasy, whence has arisen this fearful jeopardy? It arises from this fatal system; it arises from a proposal to change our government—a proposal that goes to the utter annihilation of the most solemn engagements of the States—a proposal of establishing nine States into a confederacy, to the eventual exclusion of four States. It goes to the annihilation of those solemn treaties we have formed with foreign nations. The present circumstances of France, the good offices rendered us by that kingdom, require our most faithful and most punctual adherence to our treaty with her. We are in alliance with the Spaniards, the Dutch, the Prussians: those treaties bound us as thirteen States, confederated together. Yet here is a proposal to sever that confederacy. Is it possible that we shall abandon all our treaties and national engagements? And for what? I expected to have heard the reasons of an event so unexpected to my mind, and many others. Was our civil polity, or public justice, endangered or sapped? Was the real existence of the country threatened, or was this preceded by a mournful progression of events? This proposal of altering our federal government is of a most alarming nature: make the best of this new government—say it is composed of any thing but inspiration—you ought to be extremely cautious, watchful, jealous of your liberty; for, instead of securing your rights, you may lose them for ever. If a wrong step be now made, the republic may be lost for ever. If this new government will not come up to the expectation of the people, and they should be disappointed, their liberty will be lost, and tyranny must and will arise. I repeat it again, and I beg gentlemen to consider, that a wrong step, made now, will plunge us into misery, and our republic will be lost. It will be necessary for this convention to have a faithful historical detail of the facts that preceded the session of the federal conven-

\* Experience had taught Mr. Henry that in opposing the adoption of the constitution, he had mistaken the source of public danger; that the power of the states was yet too great, in times of discord and war, for the power of the Union. The constitution, moreover, was the law of the land, and as such, he had sworn to obey it. He had seen it administered conscientiously, and for the good of the whole; he had, since its adoption, never leagued himself with the factions which embarrassed its operations. With parties, as such, he had no connection, and in this crisis he could come forward with clean hands to its support.—*Administrations of Washington and Adams; Tucker’s Life of Jefferson.*

† So general was the conviction that public welfare required a government of more extensive powers than those vested in the general government by the articles of confederation, that in May, 1787, a convention composed of delegates from all the States in the Union, with the exception of Rhode Island, assembled at Philadelphia, to take the subject under consideration. This convention continued its sessions with closed doors until the seventeenth of the following September, when the Federal Constitution was promulgated. The convention resolved, “That the constitution be laid before the United States, in Congress assembled, and that it is the opinion of this convention that it should afterwards be submitted to a convention of delegates, chosen in each State by the people thereof, for their assent and ratification;” and in conformity with this recommendation, Congress, on the twenty-eighth of the same month, passed a resolution directing that the constitution should be submitted to conventions, to be assembled in the several States of the Union. The conventions subsequently assembled, and the expediency of adopting the constitution was ably and eloquently discussed.

‡ This speech was delivered in the Virginia convention, on the fourth of June, 1788.

tion, and the reasons that actuated its members in proposing an entire alteration of government—and to demonstrate the dangers that awaited us. If they were of such awful magnitude as to warrant a proposal so extremely perilous as this, I must assert that this convention has an absolute right to a thorough discovery of every circumstance relative to this great event. And here I would make this inquiry of those worthy characters who composed a part of the late federal convention. I am sure they were fully impressed with the necessity of forming a great consolidated government, instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand, what right had they to say, "We, the People?" My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, who authorized them to speak the language of, "We, the People," instead of We, the States? States are the characteristics, and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated national government of the people of all the States. I have the highest respect for those gentlemen who formed the convention; and were some of them not here, I would express some testimonial of esteem for them. America had on a former occasion put the utmost confidence in them; a confidence which was well placed; and I am sure, sir, I would give up any thing to them; I would cheerfully confide in them as my representatives. But, sir, on this great occasion, I would demand the cause of their conduct. Even from that illustrious man, who saved us by his valor, I would have a reason for his conduct; that liberty which he has given us by his valor, tells me to ask this reason, and sure I am, were he here, he would give us that reason: but there are other gentlemen here, who can give us this information. The people gave them no power to use their name. That they exceeded their power is perfectly clear. It is not mere curiosity that actuates me; I wish to hear the real, actual, existing danger, which should lead us to take those steps so dangerous in my conception. Disorders have arisen in other parts of America, but here, sir, no dangers, no insurrection or tumult, has happened; every thing has been calm and tranquil. But notwithstanding this, we are wandering on the great ocean of human affairs. I see no landmark to guide us. We are running we know not whither. Difference in opinion has gone to a degree of inflammatory resentment, in different parts of the country, which has been occasioned by this perilous innovation. The federal convention ought to have amended the old system; for this purpose they were solely delegated: the object of their mission extended to no other consideration. You must therefore forgive the solicitation of one unworthy member, to know what danger

could have arisen under the present confederation, and what are the causes of this proposal to change our government.

This inquiry was answered by an eloquent and powerful speech from Mr. Randolph; and the debate passed into other hands until the next day, when Mr. Henry continued:

MR. CHAIRMAN: I am much obliged to the very worthy gentleman\* for his encomium. I wish I were possessed of talents, or possessed of any thing, that might enable me to elucidate this great subject. I am not free from suspicion: I am apt to entertain doubts: I rose yesterday to ask a question, which arose in my own mind. When I asked that question, I thought the meaning of my interrogation was obvious: the fate of this question and of America, may depend on this. Have they said, We, the States? Have they made a proposal of a compact between States? If they had, this would be a confederation: it is otherwise most clearly a consolidated government. The whole question turns, sir, on that poor little thing—the expression, We, the People, instead of the States of America. I need not take much pains to show, that the principles of this system are extremely pernicious, impolitic, and dangerous. Is this a monarchy, like England—a compact between prince and people; with checks on the former to secure the liberty of the latter? Is this a confederacy, like Holland—an association of a number of independent States, each of which retains its individual sovereignty? It is not a democracy, wherein the people retain all their rights securely. Had these principles been adhered to, we should not have been brought to this alarming transition, from a confederacy to a consolidated government. We have no detail of those great considerations which, in my opinion, ought to have abounded before we should recur to a government of this kind. Here is a revolution as radical as that which separated us from Great Britain. It is as radical, if in this transition, our rights and privileges are endangered, and the sovereignty of the States relinquished. And cannot we plainly see that this is actually

\* General Lee, of Westmoreland, speaking in reference to Mr. Henry's opening speech, had remarked to the convention, "I feel every power of my mind moved by the language of the honorable gentleman yesterday. The *éclat* and brilliancy which have distinguished that gentleman, the honors with which he has been dignified, and the brilliant talents which he has so often displayed, have attracted my respect and attention. On so important an occasion, and before so respectable a body, I expected a new display of his powers of oratory; but, instead of proceeding to investigate the merits of the new plan of government, the *worthy character* informs us of horrors which he felt, of *apprehensions* in his mind, which made him *tremblingly fearful* of the *fate of the commonwealth*. Mr. Chairman, was it proper to appeal to the *fear* of this House? The question before us belongs to the *judgment* of this House. I trust he is come to *judge*, and not to *alarm*."



the case? The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change so loudly talked of by some, and inconsiderately by others. Is this tame relinquishment of rights worthy of free-men? Is it worthy of that manly fortitude that ought to characterize republicans? It is said eight States have adopted this plan. I declare that if twelve States and a half had adopted it, I would, with manly firmness, and in spite of an erring world, reject it. You are not to inquire how your trade may be increased, nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your government. Having premised these things, I shall, with the aid of my judgment and information, which I confess are not extensive, go into the discussion of this system more minutely. Is it necessary for your liberty, that you should abandon those great rights by the adoption of this system? Is the relinquishment of the trial by jury, and the liberty of the press, necessary for your liberty? Will the abandonment of your most sacred rights, tend to the security of your liberty? Liberty, the greatest of all earthly blessings—give us that precious jewel, and you may take every thing else. But I am fearful I have lived long enough to become an old-fashioned fellow. Perhaps an invincible attachment to the dearest rights of man, may, in these refined, enlightened days, be deemed old-fashioned: if so, I am contented to be so. I say, the time has been when every pulse of my heart beat for American liberty, and which, I believe, had a counterpart in the breast of every true American. But suspicions have gone forth—suspicions of my integrity. It has been publicly reported that my professions are not real. Twenty-three years ago was I supposed a traitor to my country: I was then said to be a bane of sedition, because I supported the rights of my country: I may be thought suspicious, when I say our privileges and rights are in danger: but, sir, a number of the people of this country are weak enough to think these things are too true. I am happy to find that the gentlemen on the other side, declare they are groundless: but, sir, suspicion is a virtue, as long as its object is the preservation of the public good, and as long as it stays within proper bounds: should it fall on me, I am contented: conscious rectitude is a powerful consolation: I trust there are many who think my professions for the public good to be real. Let your suspicion look to both sides: there are many on the other side, who, possibly, may have been persuaded of the necessity of these measures, which I conceive to be dangerous to your liberty. Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it, but downright force. Whenever you give up that force, you are inevitably

ruined. I am answered by gentlemen, that though I may speak of terrors, yet the fact is, that we are surrounded by none of the dangers I apprehend. I conceive this new government to be one of those dangers: it has produced those horrors, which distress many of our best citizens. We are come hither to preserve the poor commonwealth of Virginia, if it can be possibly done: something must be done to preserve your liberty and mine. The confederation, this same despised government, merits, in my opinion, the highest encomium: it carried us through a long and dangerous war: it rendered us victorious in that bloody conflict with a powerful nation: it has secured us a territory greater than any European monarch possesses: and shall a government which has been thus strong and vigorous, be accused of imbecility, and abandoned for want of energy? Consider what you are about to do, before you part with this government. Take longer time in reckoning things: revolutions like this have happened in almost every country in Europe: similar examples are to be found in ancient Greece and ancient Rome: instances of the people losing their liberty by their own carelessness and the ambition of a few. We are cautioned by the honorable gentleman who presides, against faction and turbulence. I acknowledge that licentiousness is dangerous, and that it ought to be provided against: I acknowledge also the new form of government may effectually prevent it: yet, there is another thing it will as effectually do: it will oppress and ruin the people. There are sufficient guards placed against sedition and licentiousness: for when power is given to this government to suppress these, or, for any other purpose, the language it assumes is clear, express, and unequivocal; but when this constitution speaks of privileges, there is an ambiguity, sir, a fatal ambiguity—an ambiguity which is very astonishing. In the clause under consideration, there is the strangest language that I can conceive. I mean, when it says, that there shall not be more representatives than one for every 30,000. Now, sir, how easy is it to evade this privilege? "The number shall not exceed one for every 30,000." This may be satisfied by one representative from each State. Let our numbers be ever so great, this immense continent may, by this artful expression, be reduced to have but thirteen representatives. I confess this construction is not natural; but the ambiguity of the expression lays a good ground for a quarrel. Why was it not clearly and unequivocally expressed, that they should be entitled to have one for every 30,000? This would have obviated all disputes; and was this difficult to be done? What is the inference? When population increases, and a State shall send representatives in this proportion, Congress may remand them, because the right of having one for every 30,000 is not clearly expressed. This possibility of reducing the number to one for each State, approximates to probability by that other ex

pression, "but each State shall at least have one representative." Now is it not clear that, from the first expression, the number might be reduced so much, that some States should have no representative at all, were it not for the insertion of this last expression? And as this is the only restriction upon them, we may fairly conclude that they may restrain the number to one from each State. Perhaps the same horrors may hang over my mind again. I shall be told I am continually afraid: but, sir, I have strong cause of apprehension. In some parts of the plan before you, the great rights of freemen are endangered, in other parts absolutely taken away. How does your trial by jury stand? In civil cases gone—not sufficiently secured in criminal—this best privilege is gone. But we are told that we need not fear, because those in power being our representatives, will not abuse the powers we put in their hands. I am not well versed in history, but I will submit to your recollection, whether liberty has been destroyed most often by the licentiousness of the people, or by the tyranny of rulers. I imagine, sir, you will find the balance on the side of tyranny. Happy will you be, if you miss the fate of those nations, who, omitting to resist their oppressors, or negligently suffering their liberty to be wrested from them, have groaned under intolerable despotism! Most of the human race are now in this deplorable condition. And those nations who have gone in search of grandeur, power and splendor, have also fallen a sacrifice, and been the victims of their own folly. While they acquired those visionary blessings, they lost their freedom. My great objection to this government is, that it does not leave us the means of defending our rights, or of waging war against tyrants. It is urged by some gentlemen, that this new plan will bring us an acquisition of strength; an army, and the militia of the States. This is an idea extremely ridiculous: gentlemen cannot be in earnest. This acquisition will trample on your fallen liberty. Let my beloved Americans guard against that fatal lethargy that has pervaded the universe. Have we the means of resisting disciplined armies, when our only defence, the militia, is put into the hands of Congress?

The honorable gentleman said, that great danger would ensue, if the convention rose without adopting this system. I ask, where is that danger? I see none. Other gentlemen have told us, within these walls, that the Union is gone—or, that the Union will be gone. Is not this trifling with the judgment of their fellow-citizens? Till they tell us the ground of their fears, I will consider them as imaginary. I rose to make inquiry where those dangers were; they could make no answer: I believe I never shall have that answer. Is there a disposition in the people of this country to revolt against the dominion of laws? Has there been a single tumult in Virginia? Have not the people of Virginia, when laboring under the severest pressure of accumulated distresses,

manifested the most cordial acquiescence in the execution of the laws? What could be more awful, than their unanimous acquiescence under general distresses? Is there any revolution in Virginia? Whither is the spirit of America gone? Whither is the genius of America fled? It was but yesterday, when our enemies marched in triumph through our country. Yet the people of this country could not be appalled by their pompous armaments: they stopped their career, and victoriously captured them: where is the peril now, compared to that?

Some minds are agitated by foreign alarms. Happily for us, there is no real danger from Europe; that country is engaged in more arduous business; from that quarter, there is no cause of fear: you may sleep in safety for ever for them. Where is the danger? If, sir, there was any, I would recur to the American spirit to defend us—that spirit which has enabled us to surmount the greatest difficulties: to that illustrious spirit I address my most fervent prayer, to prevent our adopting a system destructive to liberty. Let not gentlemen be told, that it is not safe to reject this government. Wherefore is it not safe? We are told there are dangers; but those dangers are ideal; they cannot be demonstrated. To encourage us to adopt it, they tell us that there is a plain, easy way of getting amendments. When I come to contemplate this part, I suppose that I am mad, or, that my countrymen are so. The way to amendment is, in my conception, shut. Let us consider this plain, easy way. "The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Provided, that no amendment which may be made prior to the year 1808, shall, in any manner, affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate." Hence it appears, that three-fourths of the States must ultimately agree to any amendments that may be necessary. Let us consider the consequences of this. However uncharitable it may appear, yet I must express my opinion, that the most unworthy characters may get into power and prevent the introduction of amendments. Let us suppose, (for the case is supposable, possible and probable,) that you happen to deal these powers to unworthy hands; will they relinquish powers already in their possession, or agree to amendments? Two-thirds of the Congress, or of the State legislatures, are necessary even to propose amendments. If one-third of these be unworthy men, they may prevent the applica-

tion for amendments; but a destructive and mischievous feature is, that three-fourths of the State legislatures, or of the State conventions, must concur in the amendments when proposed. In such numerous bodies, there must necessarily be some designing, bad men. To suppose that so large a number as three-fourths of the States will concur, is to suppose that they will possess genius, intelligence and integrity, approaching to miraculous. It would, indeed, be miraculous, that they should concur in the same amendments, or, even in such as would bear some likeness to one another. For four of the smallest States, that do not collectively contain one-tenth part of the population of the United States, may obstruct the most salutary and necessary amendments. Nay, in these four states, six-tenths of the people may reject these amendments; and suppose, that amendments shall be opposed to amendments, (which is highly probable,) is it possible, that three-fourths can ever agree to the same amendments? A bare majority in these four small States, may hinder the adoption of amendments; so that we may fairly and justly conclude, that one-twentieth part of the American people may prevent the removal of the most grievous inconveniences and oppression, by refusing to accede to amendments. A trifling minority may reject the most salutary amendments. Is this an easy mode of securing the public liberty? It is, sir, a most fearful situation, when the most contemptible minority can prevent the alteration of the most oppressive government; for it may, in many respects, prove to be such. Is this the spirit of republicanism? What, sir, is the genius of democracy? Let me read that clause of the Bill of Rights of Virginia which relates to this: 3d. clause; "That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation, or community. Of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration, and that whenever any government shall be found inadequate, or contrary to these purposes, a majority of the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal." This, sir, is the language of democracy—that a majority of the community have a right to alter their government when found to be oppressive: but how different is the genius of your new constitution from this! How different from the sentiments of freemen, that a contemptible minority can prevent the good of the majority! If then, gentlemen, standing on this ground, are come to that point, that they are willing to bind themselves and their posterity to be oppressed, I am amazed and inexpressibly astonished. If this be the opinion of the majority, I must submit; but to me, sir, it appears perilous and destructive; I

cannot help thinking so: perhaps it may be the result of my age; these may be feelings natural to a man of my years, when the American spirit has left him, and his mental powers, like the members of the body, are decayed. If, sir, amendments are left to the twentieth, or to the tenth part of the people of America, your liberty is gone for ever. We have heard that there is a great deal of bribery practised in the House of Commons in England; and that many of the members raise themselves to preferments, by selling the rights of the people. But, sir, the tenth part of that body cannot continue oppressions on the rest of the people. English liberty is, in this case, on a firmer foundation than American liberty. It will be easily contrived to procure the opposition of one-tenth of the people to any alteration, however judicious.

The honorable gentleman who presides, told us, that to prevent abuses in our government, we will assemble in convention, recall our delegated powers, and punish our servants for abusing the trust reposed in them. Oh, sir, we should have fine times indeed, if to punish tyrants, it were only sufficient to assemble the people. Your arms, wherewith you could defend yourselves, are gone; and you have no longer an aristocratical, no longer a democratical spirit. Did you ever read of any revolution in any nation, brought about by the punishment of those in power, inflicted by those who had no power at all? You read of a riot act in a country which is called one of the freest in the world, where a few neighbors cannot assemble without the risk of being shot by a hired soldiery, the engines of despotism. We may see such an act in America. A standing army we shall have also, to execute the execrable commands of tyranny: and how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your mace-bearer be a match for a disciplined regiment? In what situation are we to be?

The clause before you gives a power of direct taxation, unbounded and unlimited; exclusive power of legislation in all cases whatsoever, for ten miles square, and over all places purchased for the erection of forts, magazines, arsenals, dock-yards, &c. What resistance could be made? The attempt would be madness. You will find all the strength of this country in the hands of your enemies: those garrisons will naturally be the strongest places in the country. Your militia is given up to Congress also, in another part of this plan: they will therefore act as they think proper: all power will be in their own possession: you cannot force them to receive their punishment. Of what service would militia be to you, when most probably you will not have a single musket in the state? For, as arms are to be provided by Congress, they may, or may not, furnish them.

Let us here call your attention to that part which gives the Congress power "To provide for organizing, arming and disciplining the militia, and for governing such parts of them as

may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress." By this, sir, you see that their control over our last and best defence is unlimited. If they neglect or refuse to discipline or arm our militia, they will be useless: the states can do neither, this power being exclusively given to Congress. The power of appointing officers over men not disciplined or armed, is ridiculous: so that this pretended little remnant of power, left to the States, may, at the pleasure of Congress, be rendered nugatory. Our situation will be deplorable indeed: nor can we ever expect to get this government amended; since I have already shown, that a very small minority may prevent it, and that small minority interested in the continuance of the oppression. Will the oppressor let go the oppressed? Was there ever an instance? Can the annals of mankind exhibit one single example, where rulers, overcharged with power, willingly let go the oppressed, though solicited and requested most earnestly? The application for amendments will therefore be fruitless. Sometimes the oppressed have got loose by one of those bloody struggles that desolate a country. But a willing relinquishment of power is one of those things which human nature never was, nor ever will be, capable of.

The honorable gentleman's observations, respecting the people's right of being the agents in the formation of this government, are not accurate, in my humble conception. The distinction between a national government and a confederacy, is not sufficiently discerned. Had the delegates, who were sent to Philadelphia, a power to propose a consolidated government instead of a confederacy? Were they not deputed by States, and not by the people? The assent of the people, in their collective capacity, is not necessary to the formation of a federal government. The people have no right to enter into leagues, alliances, or confederations: they are not the proper agents for this purpose: States and sovereign powers are the only proper agents for this kind of government. Show me an instance where the people have exercised this business: has it not always gone through the legislatures? I refer you to the treaties with France, Holland, and other nations: how were they made? Were they not made by the States? Are the people, therefore, in their aggregate capacity, the proper persons to form a confederacy? This, therefore, ought to depend on the consent of the legislatures; the people have never sent delegates to make any proposition of changing the government. Yet I must say, at the same time, that it was made on grounds the most pure, and perhaps I might have been brought to consent to it, so far as to the change of government; but there is one thing in it, which I never would acquiesce in. I mean, the changing it into a consolidated government, which is so abhorrent to my mind.

The honorable gentleman then went on to the figure we make with foreign nations; the contemptible one we make in France and Holland, which, according to the substance of my notes, he attributes to the present feeble government. An opinion has gone forth, we find, that we are a contemptible people: the time has been when we were thought otherwise. Under this same despised government, we commanded the respect of all Europe: wherefore are we now reckoned otherwise? The American spirit has fled from hence: it has gone to regions, where it has never been expected: it has gone to the people of France, in search of a splendid government—a strong, energetic government. Shall we imitate the example of those nations, who have gone from a simple to a splendid government? Are those nations more worthy of our imitation? What can make an adequate satisfaction to them for the loss they have suffered in attaining such a government—for the loss of their liberty? If we admit this consolidated government, it will be because we like a great and splendid one. Some way or other we must be a great and mighty empire; we must have an army, and a navy, and a number of things. When the American spirit was in its youth, the language of America was different: liberty, sir, was then the primary object. We are descended from a people whose government was founded on liberty: our glorious forefathers, of Great Britain, made liberty the foundation of every thing. That country is become a great, mighty and splendid nation; not because their government is strong and energetic: but, sir, because liberty is its direct end and foundation. We drew the spirit of liberty from our British ancestors; by that spirit we have triumphed over every difficulty. But now, sir, the American spirit, assisted by the ropes and chains of consolidation, is about to convert this country into a powerful and mighty empire. If you make the citizens of this country agree to become the subjects of one great consolidated empire of America, your government will not have sufficient energy to keep them together: such a government is incompatible with the genius of republicanism. There will be no checks, no real balances, in this government. What can avail your specious, imaginary balances; your rope-dancing, chain-rattling, ridiculous, ideal checks and contrivances? But, sir, we are not feared by foreigners; we do not make nations tremble. Would this constitute happiness, or secure liberty? I trust, sir, our political hemisphere will ever direct its operations to the security of those objects. Consider our situation, sir; go to the poor man, ask him what he does; he will inform you that he enjoys the fruits of his labor, under his own fig-tree, with his wife and children around him, in peace and security. Go to every other member of the society, you will find the same tranquil ease and content; you will find no alarms or disturbances! Why then tell us of dangers, to terrify us into the adoption of this new form of

government? And yet who knows the dangers that this new system may produce? They are out of the sight of the common people: they cannot foresee latent consequences. I dread the operation of it on the middling and lower classes of people: it is for them I fear the adoption of this system. I fear I tire the patience of the committee, but I beg to be indulged with a few more observations.

When I thus profess myself an advocate for the liberty of the people, I shall be told, I am a designing man, that I am to be a great man, that I am to be a demagogue; and many similar illiberal insinuations will be thrown out; but, sir, conscious rectitude outweighs these things with me. I see great jeopardy in this new government: I see none from our present one. I hope some gentleman or other will bring forth, in full array, those dangers, if there be any, that we may see and touch them; I have said that I thought this a consolidated government: I will now prove it. Will the great rights of the people be secured by this government? Suppose it should prove oppressive, how can it be altered? Our bill of rights declares, "That a majority of the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal." I have just proved, that one-tenth, or less, of the people of America—a most despicable minority, may prevent this reform, or alteration. Suppose the people of Virginia should wish to alter their government, can a majority of them do it? No, because they are connected with other men; or, in other words, consolidated with other States. When the people of Virginia, at a future day, shall wish to alter their government, though they should be unanimous in this desire, yet they may be prevented therefrom by a despicable minority at the extremity of the United States. The founders of your own constitution made your government changeable: but the power of changing it is gone from you! Whither is it gone? It is placed in the same hands that hold the rights of twelve other States; and those, who hold those rights, have right and power to keep them. It is not the particular government of Virginia; one of the leading features of that government is, that a majority can alter it, when necessary for the public good. This government is not a Virginian, but an American government. Is it not therefore a consolidated government? The sixth clause of your bill of rights tells you, "That elections of members to serve as representatives of the people in Assembly, ought to be free, and that all men, having sufficient evidence of permanent, common interest with, and attachment to the community, have the right of suffrage, and cannot be taxed or deprived of their property, for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not in like manner assented for the public good." But what does this constitution

say? The clause under consideration gives an unlimited and unbounded power of taxation. Suppose every delegate from Virginia opposes a law laying a tax, what will it avail? They are opposed by a majority; eleven members can destroy their efforts: those feeble ten cannot prevent the passing the most oppressive tax-law. So that in direct opposition to the spirit and express language of your declaration of rights, you are taxed, not by your own consent, but by people who have no connection with you.

The next clause of the bill of rights tells you, "That all power of suspending law, or the execution of laws, by any authority, without the consent of the representatives of the people, is injurious to their rights, and ought not to be exercised." This tells us that there can be no suspension of government, or laws, without our own consent; yet this constitution can counteract and suspend any of our laws, that contravene its oppressive operation; for they have the power of direct taxation, which suspends our bill of rights; and it is expressly provided, that they can make all laws necessary for carrying their powers into execution; and it is declared paramount to the laws and constitutions of the States. Consider how the only remaining defence, we have left, is destroyed in this manner. Besides the expenses of maintaining the Senate and other House in as much splendor as they please, there is to be a great and mighty president, with very extensive powers—the powers of a king. He is to be supported in extravagant magnificence: so that the whole of our property may be taken by this American government, by laying what taxes they please, giving themselves what salaries they please, and suspending our laws at their pleasure. I might be thought too inquisitive, but I believe I should take up but very little of your time in enumerating the little power that is left to the government of Virginia; for this power is reduced to little or nothing. Their garrisons, magazines, arsenals, and forts, which will be situated in the strongest places within the States—their ten miles square, with all the fine ornaments of human life, added to their powers, and taken from the States, will reduce the power of the latter to nothing. The voice of tradition, I trust, will inform posterity of our struggles for freedom. If our descendants be worthy the name of Americans, they will preserve, and hand down to their latest posterity, the transactions of the present times; and though, I confess, my exclamations are not worthy the hearing, they will see that I have done my utmost to preserve their liberty: for I never will give up the power of direct taxation, but for a scourge. I am willing to give it conditionally; that is, after non-compliance with requisitions: I will do more, sir, and what I hope will convince the most sceptical man, that I am a lover of the American Union; that in case Virginia shall not make punctual payment, the control of our custom-houses, and the whole regulation

of trade, shall be given to Congress; and that Virginia shall depend on Congress even for passports, till Virginia shall have paid the last farthing, and furnished the last soldier. Nay, sir, there is another alternative to which I would consent: even that they should strike us out of the Union, and take away from us all federal privileges, till we comply with federal requisitions; but let it depend upon our own pleasure to pay our money in the most easy manner for our people. Were all the States, more terrible than the mother country, to join against us, I hope Virginia could defend herself; but, sir, the dissolution of the Union is most abhorrent to my mind. The first thing I have at heart is American liberty; the second thing is American union; and I hope the people of Virginia will endeavor to preserve that union. The increasing population of the Southern States, is far greater than that of New England; consequently, in a short time, they will be far more numerous than the people of that country. Consider this, and you will find this State more particularly interested to support American liberty, and not bind our posterity by an improvident relinquishment of our rights. I would give the best security for a punctual compliance with requisitions; but I beseech gentlemen, at all hazards, not to grant this unlimited power of taxation.

The honorable gentleman has told us that these powers given to Congress, are accompanied by a judiciary which will correct all. On examination, you will find this very judiciary oppressively constructed, your jury-trial destroyed, and the judges dependent on Congress. In this scheme of energetic government, the people will find two sets of tax-gatherers—the State and the federal sheriffs. This, it seems to me, will produce such dreadful oppression, as the people cannot possibly bear. The federal sheriff may commit what oppression, make what distresses, he pleases, and ruin you with impunity: for how are you to tie his hands? Have you any sufficient, decided means of preventing him from sucking your blood by speculations, commissions, and fees? Thus thousands of your people will be most shamefully robbed. Our State sheriffs, those unfeeling bloodsuckers, have, under the watchful eye of our legislature, committed the most horrid and barbarous ravages on our people. It has required the most constant vigilance of the legislature to keep them from totally ruining the people. A repeated succession of laws has been made, to suppress their iniquitous speculations and cruel extortions; and as often has their nefarious ingenuity devised methods of evading the force of those laws: in the struggle, they have generally triumphed over the legislature. It is a fact, that lands have sold for five shillings, which were worth one hundred pounds. If sheriffs, thus immediately under the eye of our State legislature and judiciary, have dared to commit these outrages, what would they not have done if their masters had been at Phila-

delphia or New York? If they perpetrate the most unwarrantable outrage, on your persons or property, you cannot get redress on this side of Philadelphia or New York: and how can you get it there? If your domestic avocations could permit you to go thither, there you must appeal to judges sworn to support this constitution in opposition to that of any State, and who may also be inclined to favor their own officers. When these harpies are aided by excisemen, who may search, at any time, your houses and most secret recesses, will the people bear it? If you think so, you differ from me. Where I thought there was a possibility of such mischiefs, I would grant power with a niggardly hand; and here there is a strong probability that these oppressions shall actually happen. I may be told, that it is safe to err on that side; because such regulations may be made by Congress, as shall restrain these officers, and because laws are made by our representatives, and judged by righteous judges: but, sir, as these regulations may be made, so they may not; and many reasons there are to induce a belief, that they will not: I shall therefore be an infidel on that point till the day of my death.

This constitution is said to have beautiful features; but when I come to examine these features, sir, they appear to me horribly frightful. Among other deformities, it has an awful squinting; it squints towards monarchy: and does not this raise indignation in the breast of every true American? Your President may easily become king. Your Senate is so imperfectly constructed, that your dearest rights may be sacrificed by what may be a small minority: and a very small minority may continue for ever unchangeably this government, although horribly defective. Where are your checks in this government? Your strongholds will be in the hands of your enemies. It is on a supposition that your American governors shall be honest, that all the good qualities of this government are founded; but its defective and imperfect construction, puts it in their power to perpetrate the worst of mischiefs, should they be bad men. And, sir, would not all the world, from the eastern to the western hemisphere, blame our distracted folly in resting our rights upon the contingency of our rulers being good or bad? Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty. I say that the loss of that dearest privilege has ever followed, with absolute certainty, every such mad attempt. If your American chief be a man of ambition and abilities, how easy will it be for him to render himself absolute! The army is in his hands, and, if he be a man of address, it will be attached to him; and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design. And, sir, will the American spirit solely relieve you when this happens? I would rather infinitely, and I am sure most of this

convention are of the same opinion, have a king, lords and commons, than a government so replete with such insupportable evils. If we make a king, we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them: but the president in the field, at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke. I cannot, with patience, think of this idea. If ever he violates the laws, one of two things will happen: he will come at the head of his army to carry every thing before him; or, he will give bail, or do what Mr. Chief Justice will order him. If he be guilty, will not the recollection of his crimes teach him to make one bold push for the American throne? Will not the immense difference between being master of every thing, and being ignominiously tried and punished, powerfully excite him to make this bold push? But, sir, where is the existing force to punish him? Can he not, at the head of his army, beat down every opposition? Away with your president, we shall have a king: the army will salute him monarch; your militia will leave you, and assist in making him king, and fight against you: and what have you to oppose this force? What will then become of you and your rights? Will not absolute despotism ensue? [Here Mr. Henry strongly and pathetically expatiated on the probability of the president's enslaving America, and the horrid consequences that must result.]

What can be more defective than the clause concerning the elections? The control given to Congress, over the time, place and manner of holding elections, will totally destroy the end of suffrage. The elections may be held at one place, and the most inconvenient in the state; or they may be at remote distances from those who have a right of suffrage: hence, nine out of ten must either not vote at all, or vote for strangers: for the most influential characters will be applied to, to know who are the most proper to be chosen. I repeat, that the control of Congress over the manner, &c. of electing, well warrants this idea. The natural consequence will be, that this democratic branch will possess none of the public confidence: the people will be prejudiced against representatives chosen in such an injudicious manner. The proceedings in the northern conclave will be hidden from the yeomanry of this country. We are told, that the yeas and nays shall be taken and entered on the journals: this, sir, will avail nothing: it may be locked up in their chests, and concealed for ever from the people; for they are not to publish what parts they think require secrecy; they may think, and will think, the whole requires it.

Another beautiful feature of this constitution, is the publication, from time to time, of the receipts and expenditures of the public money. This expression, from time to time, is

very indefinite and indeterminate: it may extend to a century. Grant that any of them are wicked, they may squander the public money so as to ruin you, and yet this expression will give you no redress. I say, they may ruin you; for where, sir, is the responsibility? The yeas and nays will show you nothing, unless they be fools as well as knaves; for, after having wickedly trampled on the rights of the people, they would act like fools indeed, were they to publish and divulge their iniquity, when they have it equally in their power to suppress and conceal it. Where is the responsibility—that leading principle in the British government? In that government, a punishment, certain and inevitable, is provided; but in this, there is no real, actual punishment for the grossest mal-administration. They may go without punishment, though they commit the most outrageous violation on our immunities. That paper may tell me they will be punished. I ask, by what law? They must make the law, for there is no existing law to do it. What—will they make a law to punish themselves? This, sir, is my great objection to the constitution, that there is no true responsibility, and that the preservation of our liberty depends on the single chance of men being virtuous enough to make laws to punish themselves. In the country from which we are descended, they have real, and not imaginary responsibility; for there, mal-administration has cost their heads to some of the most saucy geniuses that ever were. The senate, by making treaties, may destroy your liberty and laws, for want of responsibility. Two-thirds of those that shall happen to be present, can, with the president, make treaties, that shall be the supreme law of the land: they may make the most ruinous treaties, and yet there is no punishment for them. Whoever shows me a punishment provided for them, will oblige me. So, sir, notwithstanding there are eight pillars, they want another. Where will they make another? I trust, sir, the exclusion of the evils wherewith this system is replete, in its present form, will be made a condition precedent to its adoption, by this or any other state. The transition from a general, unqualified admission to offices, to a consolidation of government, seems easy; for, though the American States are dissimilar in their structure, this will assimilate them: this, sir, is itself a strong consolidating feature, and is not one of the least dangerous in that system. Nine States are sufficient to establish this government over those nine. Imagine that nine have come into it. Virginia has certain scruples. Suppose she will consequently refuse to join with those States: may not they still continue in friendship and union with her? If she sends her annual requisitions in dollars, do you think their stomachs will be so squeamish as to refuse her dollars? Will they not accept her regiments? They would intimidate you into an inconsiderate adoption, and frighten you with ideal evils, and that the Union shall be



dissolved. 'Tis a bugbear, sir: the fact is, sir, that the eight adopting States can hardly stand on their own legs. Public fame tells us, that the adopting States have already heart-burnings and animosity, and repent their precipitate hurry: this, sir, may occasion exceeding great mischief. When I reflect on these, and many other circumstances, I must think those States will be found to be in confederacy with us. If we pay our quota of money annually, and furnish our ratable number of men, when necessary, I can see no danger from a rejection. The history of Switzerland clearly proves, that we might be in amicable alliance with those States, without adopting this constitution. Switzerland is a confederacy, consisting of dissimilar governments. This is an example, which proves that governments, of dissimilar structures, may be confederated. That confederate republic has stood upwards of four hundred years; and, although several of the individual republics are democratic, and the rest aristocratic, no evil has resulted from this dissimilarity, for they have braved all the power of France and Germany, during that long period. The Swiss spirit, sir, has kept them together; they have encountered and overcome immense difficulties, with patience and fortitude. In the vicinity of powerful and ambitious monarchs, they have retained their independence, republican simplicity and valor. [Here Mr. Henry drew a comparison between the people of that country and those of France, and made a quotation from Addison, illustrating the subject.] Look at the peasants of that country, and of France, and mark the difference. You will find the condition of the former far more desirable and comfortable. No matter whether a people be great, splendid and powerful, if they enjoy freedom. The Turkish Grand Seignior, along-side of our president, would put us to disgrace: but we should be abundantly consoled for this disgrace, should our citizen be put in contrast with the Turkish slave.

The most valuable end of government, is the liberty of the inhabitants. No possible advantages can compensate for the loss of this privilege. Show me the reason why the American Union is to be dissolved. Who are those eight adopting States? Are they averse to give us a little time to consider, before we conclude? Would such a disposition render a junction with them eligible; or, is it the genius of that kind of government, to precipitate a people hastily into measures of the utmost importance, and grant no indulgence? If it be, sir, is it for us to accede to such a government? We have a right to have time to consider—we shall therefore insist upon it. Unless the government be amended, we can never accept it. The adopting States will doubtless accept our money and our regiments; and what is to be the consequence, if we are disunited? I believe that it is yet doubtful, whether it is not proper to stand by awhile, and see the effect of its adoption in other States. In forming a government,

the utmost care should be taken, to prevent its becoming oppressive; and this government is of such an intricate and complicated nature, that no man on this earth can know its real operation. The other States have no reason to think, from the antecedent conduct of Virginia, that she has any intention of seceding from the Union, or of being less active to support the general welfare. Would they not, therefore, acquiesce in our taking time to deliberate—deliberate whether the measure be not perilous, not only for us, but the adopting States. Permit me, sir, to say, that a great majority of the people, even in the adopting States, are averse to this government. I believe I would be right to say, that they have been egregiously misled. Pennsylvania has, perhaps, been tricked into it. If the other States, who have adopted it, have not been tricked, still they were too much hurried into its adoption. There were very respectable minorities in several of them; and, if reports be true, a clear majority of the people are averse to it. If we also accede, and it should prove grievous, the peace and prosperity of our country, which we all love, will be destroyed. This government has not the affection of the people, at present. Should it be oppressive, their affection will be totally estranged from it—and, sir, you know, that a government without their affections can neither be durable nor happy. I speak as one poor individual—but, when I speak, I speak the language of thousands. But, sir, I mean not to breathe the spirit, nor utter the language of secession.

I have trespassed so long on your patience, I am really concerned that I have something yet to say. The honorable member has said that we shall be properly represented: remember, sir, that the number of our representatives is but ten, whereof six are a majority. Will those men be possessed of sufficient information? A particular knowledge of particular districts will not suffice. They must be well acquainted with agriculture, commerce, and a great variety of other matters throughout the continent; they must know not only the actual state of nations in Europe and America, the situation of their farmers, cottagers and mechanics, but also the relative situation and intercourse of those nations. Virginia is as large as England. Our proportion of representatives is but ten men. In England they have five hundred and thirty. The House of Commons in England, numerous as they are, we are told, is bribed, and have bartered away the rights of their constituents: what then shall become of us? Will these few protect our rights? Will they be incorruptible? You say they will be better men than the English commoners. I say they will be infinitely worse men, because they are to be chosen blindfolded: their election (the term, as applied to their appointment, is inaccurate) will be an involuntary nomination, and not a choice. I have, I fear, fatigued the committee, yet I have not said the one hundred thousandth part of what I have on my mind.



and wish to impart. On this occasion, I conceived myself bound to attend strictly to the interests of the State; and I thought her dearest rights at stake: having lived so long—been so much honored—my efforts, though small, are due to my country. I have found my mind hurried on from subject to subject, on this very great occasion. We have all been out of order, from the gentleman who opened to-day, to myself. I did not come prepared to speak on so multifarious a subject, in so general a manner. I trust you will indulge me another time. Before you abandon the present system, I hope you will consider not only its defects most maturely, but likewise those of that which you are to substitute for it. May you be fully apprised of the dangers of the latter, not by fatal experience, but by some abler advocate than I.

On the seventh of June, Mr. Henry again continued his remarks.

MR. CHAIRMAN: I have thought, and still think, that a full investigation of the actual situation of America ought to precede any decision on this great and important question. That government is no more than a choice among evils, is acknowledged by the most intelligent among mankind, and has been a standing maxim for ages. If it be demonstrated, that the adoption of the new plan is a little or a trifling evil, then, sir, I acknowledge that adoption ought to follow: but, sir, if this be a truth, that its adoption may entail misery on the free people of this country, I then insist, that rejection ought to follow. Gentlemen strongly urge that its adoption will be a mighty benefit to us: but, sir, I am made of such incredulous materials, that assertions and declarations do not satisfy me. I must be convinced, sir. I shall retain my infidelity on that subject till I see our liberties secured in a manner perfectly satisfactory to my understanding.

There are certain maxims, by which every wise and enlightened people will regulate their conduct. There are certain political maxims, which no free people ought ever to abandon: maxims, of which the observance is essential to the security of happiness. It is impiously irritating the avenging hand of Heaven, when a people, who are in the full enjoyment of freedom, launch out into the wide ocean of human affairs, and desert those maxims which alone can preserve liberty. Such maxims, humble as they are, are those only which can render a nation safe or formidable. Poor little humble republican maxims have attracted the admiration and engaged the attention of the virtuous and wise in all nations, and have stood the shock of ages. We do not now admit the validity of maxims which we once delighted in. We have since adopted maxims of a different, but more refined nature; new maxims, which tend to the prostration of republicanism.

We have one, sir, that all men are by nature

free and independent, and have certain inherent rights, of which, when they enter into society, they cannot, by any compact, deprive or divest their posterity. We have a set of maxims of the same spirit, which must be beloved by every friend to liberty, to virtue, to mankind—our bill of rights contains those admirable maxims.

Now, sir, I say, let us consider whether the picture given of American affairs ought to drive us from those beloved maxims.

The honorable gentleman (Mr. Randolph) has said, that it is too late in the day for us to reject this new plan. That system which was once execrated by the honorable member, must now be adopted, let its defects be ever so glaring. That honorable member will not accuse me of want of candor, when I cast in my mind what he has given the public,\* and compare it to what has happened since. It seems to me very strange and unaccountable, that what was the object of his execration should now receive his encomiums. Something extraordinary must have operated so great a change in his opinion. It is too late in the day! Gentlemen must excuse me, if they should declare again and again, that it is too late, and I should think differently. I never can believe, sir, that it is too late to save all that is precious. If it be proper, and, independently of every external consideration, wisely constructed, let us receive it: but, sir, shall its adoption by eight States induce us to receive it, if it be replete with the most dangerous defects? They urge, that subsequent amendments are safer than previous amendments, and that they will answer the same ends. At present, we have our liberties and our privileges in our own hands. Let us not relinquish them. Let us not adopt this system till we see them secured. There is some small possibility, that should we follow the conduct of Massachusetts, amendments might be obtained. There is a small possibility of amending any government: but, sir, shall we abandon our inestimable rights, and rest their security on a mere possibility? The gentleman fears the loss of the Union. If eight States have ratified it unamended, and we should rashly imitate their precipitate example, do we not thereby disunite from several other States? Shall those who have risked their lives for the sake of union, be at once thrown out of it? If it be amended, every State will accede to it; but by an imprudent adoption in its defective and dangerous state, a schism must inevitably be the consequence; I can never, therefore, consent to hazard our unalienable rights on an absolute uncertainty. You are told there is no peace, although you fondly flatter yourselves that all is peace—no peace; a general cry and alarm in the country; commerce, riches and wealth vanished; citizens going to seek comforts in other parts of the world; laws insulted; many in-

\* Alluding to Mr. Randolph's letter on that subject, to the Speaker of the House of Delegates.

stances of tyrannical legislation. These things, sir, are new to me. He has made the discovery. As to the administration of justice, I believe that failures in commerce, &c., cannot be attributed to it. My age enables me to recollect its progress under the old government. I can justify it by saying, that it continues in the same manner in this State, as it did under the former government. As to other parts of the continent, I refer that to other gentlemen. As to the ability of those who administer it, I believe they would not suffer by a comparison with those who administered it under the royal authority. Where is the cause of complaint if the wealthy go away? Is this, added to the other circumstances, of such enormity, and does it bring such danger over this commonwealth, as to warrant so important and so awful a change, in so precipitate a manner? As to insults offered to the laws, I know of none. In this respect I believe this commonwealth would not suffer by a comparison with the former government. The laws are as well executed, and as patiently acquiesced in, as they were under the royal administration. Compare the situation of the country; compare that of our citizens to what they were then, and decide whether persons and property are not as safe and secure as they were at that time. Is there a man in this commonwealth, whose person can be insulted with impunity? Cannot redress be had here for personal insults or injuries, as well as in any part of the world; as well as in those countries where aristocrats and monarchs triumph and reign? Is not the protection of property in full operation here? The contrary cannot, with truth, be charged on this commonwealth. Those severe charges which are exhibited against it, appear to me totally groundless. On a fair investigation, we shall be found to be surrounded by no real dangers. We have the animating fortitude and persevering acclivity of republican men, to carry us through misfortunes and calamities. 'Tis the fortune of a republic to be able to withstand the stormy ocean of human vicissitudes. I know of no danger awaiting us. Public and private security are to be found here in the highest degree. Sir, it is the fortune of a free people not to be intimidated by imaginary dangers. Fear is the passion of slaves. Our political and natural hemispheres are now equally tranquil. Let us recollect the awful magnitude of the subject of our deliberation. Let us consider the latent consequences of an erroneous decision, and let not our minds be led away by unfair misrepresentations and uncandid suggestions. There have been many instances of uncommon lenity and temperance used in the exercise of power in this commonwealth. I could call your recollection to many that happened during the war and since, but every gentleman here must be apprised of them.

The honorable member has given you an elaborate account of what he judges tyrannical

legislation, and an *ex post facto* law in the case of Josiah Phillips. He has misrepresented the facts. That man was not executed by a tyrannical stroke of power; nor was he a Socrates. He was a fugitive murderer and an outlaw; a man who commanded an infamous banditti, at a time when the war was at the most perilous stage. He committed the most cruel and shocking barbarities. He was an enemy to the human name. Those who declare war against the human race, may be struck out of existence as soon as they are apprehended. He was not executed according to those beautiful legal ceremonies which are pointed out by the laws, in criminal cases. The enormity of his crimes did not entitle him to it. I am truly a friend to legal forms and methods; but, sir, the occasion warranted the measure. A, irate, an outlaw, or a common enemy to all mankind, may be put to death at any time. It is justified by the laws of nature and nations.

The honorable member tells us then, that there are burnings and discontents in the hearts of our citizens in general, and that they are dissatisfied with their government. I have no doubt the honorable member believes this to be the case, because he says so. But I have the comfortable assurance, that it is a certain fact, that it is not so. The middle and lower ranks of people have not those illumined ideas which the well-born are so happily possessed of; they cannot so readily perceive latent objects. The microscopic eyes of modern statesmen can see abundance of defects in old systems; and their illumined imaginations discover the necessity of a change. They are captivated by the parade of the number ten; the charms of the ten miles square. Sir, I fear this change will ultimately lead to our ruin. My fears are not the force of imagination; they are but too well founded. I tremble for my country: but, sir, I trust, I rely, and I am confident, that this political speculation has not taken so strong a hold of men's minds as some would make us believe.

The dangers which may arise from our geographical situation, will be more properly considered a while hence. At present, what may be surmised on the subject, with respect to the adjacent States, is merely visionary. Strength, sir, is a relative term. When I reflect on the natural force of those nations that might be induced to attack us, and consider the difficulty of the attempt and uncertainty of the success, and compare thereto the relative strength of our country, I say that we are strong. We have no cause to fear from that quarter; we have nothing to dread from our neighboring States. The superiority of our cause would give us an advantage over them, were they so unfriendly or rash as to attack us. As to that part of the community which the honorable gentleman spoke of as in danger of being separated from us, what incitement or inducement could its inhabitants have to wish such an event? It is a matter of doubt whether they

would derive any advantage to themselves, or be any loss to us by such a separation. Time has been, and may yet come, when they will find it their advantage and true interest to be united with us. There is no danger of a dismemberment of our country, unless a constitution be adopted which will enable the government to plant enemies on our backs. By the confederation, the rights of territory are secured. No treaty can be made without the consent of nine States. While the consent of nine States is necessary to the cession of territory, you are safe. If it be put in the power of a less number, you will most infallibly lose the Mississippi. As long as we can preserve our unalienable rights, we are in safety. This new constitution will involve in its operation the loss of the navigation of that valuable river. The honorable gentleman cannot be ignorant of the Spanish transactions. A treaty had been nearly entered into with Spain, to relinquish that navigation, and that relinquishment would absolutely have taken place, had the consent of seven States been sufficient. The honorable gentleman told us then, that eight States having adopted this system, we cannot suppose they will recede on our account. I know not what they may do; but this I know, that a people of infinitely less importance than those of Virginia, stood the terror of war. Vermont, sir, withstood the terror of thirteen States. Maryland did not accede to the confederation till the year 1781. These two States, feeble as they are, comparatively to us, were not afraid of the whole Union. Did either of these States perish? No, sir, they were admitted freely into the Union. Will not Virginia then be admitted? I flatter myself that those States who have ratified the new plan of government will open their arms and cheerfully receive us, although we should propose certain amendments as the conditions on which we would ratify it. During the late war, all the States were in pursuit of the same object. To obtain that object, they made the most strenuous exertions. They did not suffer trivial considerations to impede its acquisition. Give me leave to say, that if the smallest States in the Union were admitted into it, after having unreasonably procrastinated their accession, the greatest and most mighty State in the Union will be easily admitted, when her reluctance to an immediate accession to this system is founded on the most reasonable grounds. When I call this the most mighty State in the Union, do I not speak the truth? Does not Virginia surpass every State in the Union, in number of inhabitants, extent of territory, felicity of position, and affluence and wealth? Some infatuation hangs over men's minds, that they will inconsiderately precipitate into measures the most important, and give not a moment's deliberation to others, nor pay any respect to their opinions. Is this federalism? Are these the beloved effects of the federal spirit, that its votaries will never accede to the just proposi-

tions of others? Sir, were there nothing objectionable in it but that, I would vote against it. I desire to have nothing to do with such men as will obstinately refuse to change their opinions. Are our opinions not to be regarded? I hope that you will recollect that you are going to join with men who will pay no respect even to this State.

Switzerland consists of thirteen cantons expressly confederated for national defence. They have stood the shock of four hundred years: that country has enjoyed internal tranquillity most of that long period. Their dissensions have been, comparatively to those of other countries, very few. What has passed in the neighboring countries? wars, dissensions and intrigues—Germany involved in the most deplorable civil war thirty years successively, continually convulsed with intestine divisions, and harassed by foreign wars—France with her mighty monarchy perpetually at war. Compare the peasants of Switzerland with those of any other mighty nation; you will find them far more happy: for one civil war among them, there have been five or six among other nations: their attachment to their country, and to freedom, their resolute intrepidity in their defence, the consequent security and happiness which they have enjoyed, and the respect and awe which these things produced in their bordering nations, have signalized those republicans. Their valor, sir, has been active; every thing that sets in motion the springs of the human heart, engaged them to the protection of their inestimable privileges. They have not only secured their own liberty, but have been the arbiters of the fate of other people. Here, sir, contemplate the triumph of republican governments over the pride of monarchy. I acknowledge, sir, that the necessity of national defence has prevailed in invigorating their councils and arms, and has been, in a considerable degree, the means of keeping these honest people together. But, sir, they have had wisdom enough to keep together and render themselves formidable. Their heroism is proverbial. They would heroically fight for their government, and their laws. One of the illumined sons of these times would not fight for those objects. Those virtuous and simple people have not a mighty and splendid president, nor enormously expensive navies and armies to support. No, sir, those brave republicans have acquired their reputation no less by their undaunted intrepidity, than by the wisdom of their frugal and economical policy. Let us follow their example, and be equally happy. The honorable member advises us to adopt a measure which will destroy our bill of rights: for, after hearing his picture of nations, and his reasons for abandoning all the powers retained to the States by the confederation, I am more firmly persuaded of the impropriety of adopting this new plan in its present shape.

I had doubts of the power of those who went to the convention; but now we are possessed

of it, let us examine it. When we trusted the great object of revising the confederation to the greatest, the best and most enlightened of our citizens, we thought their deliberations would have been solely confined to that revision. Instead of this, a new system, totally different in its nature, and vesting the most extensive powers in Congress, is presented. Will the ten men you are to send to Congress, be more worthy than those seven were? If power grew so rapidly in their hands, what may it not do in the hands of others? If those who go from this State will find power accompanied with temptation, our situation must be truly critical. When about forming a government, if we mistake the principles, or commit any other error, the very circumstance promises that power will be abused. The greatest caution and circumspection are therefore necessary; nor does this proposed system in its investigation here, deserve the least charity.

The honorable member says, that the national government is without energy. I perfectly agree with him: and when he cried out union, I agreed with him: but I tell him not to mistake the end for the means. The end is union; the most capital means, I suppose, are an army and navy: on a supposition I will acknowledge this; still the bare act of agreeing to that paper, though it may have an amazing influence, will not pay our millions. There must be things to pay debts. What these things are, or how they are to be produced, must be determined by our political wisdom and economy.

The honorable gentleman alleges, that previous amendments will prevent the junction of our riches from producing great profits and emoluments, (which would enable us to pay our public debts,) by excluding us from the Union. I believe, sir, that a previous ratification of a system notoriously and confessedly defective, will endanger our riches, our liberty, our all. Its defects are acknowledged; they cannot be denied. The reason offered by the honorable gentleman for adopting this defective system, is the adoption by eight States. I say, sir, that, if we present nothing but what is reasonable in the shape of amendments, they will receive us. Union is as necessary for them as for us. Will they then be so unreasonable as not to join us? If such be their disposition, I am happy to know it in time.

The honorable member then observed, that nations will expend millions for commercial advantages; that is, they will deprive you of every advantage if they can. Apply this another way. Their cheaper way, instead of laying out millions in making war upon you, will be to corrupt your senators. I know that if they be not above all price, they may make a sacrifice of our commercial interests. They may advise your president to make a treaty that will not only sacrifice all your commercial interests, but throw prostrate your bill of rights. Does he fear that their ships will outnumber

ours on the ocean, or that nations, whose interests come in contrast with ours, in the progress of their guilt, will perpetrate the vilest expedients to exclude us from a participation in commercial advantages? Does he advise us, in order to avoid this evil, to adopt a constitution, which will enable such nations to obtain their ends by the more easy mode of contaminating the principles of our senators? Sir, if our senators will not be corrupted, it will be because they will be good men; and not because the constitution provides against corruption; for there is no real check secured in it, and the most abandoned and profligate acts may with impunity be committed by them.

With respect to Maryland, what danger from thence? I know none. I have not heard of any hostility premeditated or committed. Nineteenths of the people have not heard of it. Those who are so happy as to be illumined, have not informed their fellow-citizens of it. I am so valiant as to say, that no danger can come from that source, sufficient to make me abandon my republican principles. The honorable gentleman ought to have recollected, that there were no tyrants in America, as there are in Europe: the citizens of republican borders are only terrible to tyrants: instead of being dangerous to one another, they mutually support one another's liberties. We might be confederated with the adopting States, without ratifying this system. No form of government renders a people more formidable. A confederacy of States joined together, becomes strong as the United Netherlands. The government of Holland (execrated as it is) proves that the present confederation is adequate to every purpose of human association. There are seven provinces confederated together for a long time, containing numerous opulent cities and many of the finest ports in the world. The recollection of the situation of that country, would make me execrate monarchy. The singular felicity and success of that people, are unparalleled; freedom has done miracles there in reclaiming land from the ocean. It is the richest spot on the face of the globe. Have they no men or money? Have they no fleets or armies? Have they no arts or sciences among them? How did they repel the attacks of the greatest nations in the world? How have they acquired their amazing influence and power? Did they consolidate government, to effect these purposes as we do? No, sir, they have triumphed over every obstacle and difficulty, and have arrived at the summit of political felicity, and of uncommon opulence, by means of a confederacy; that very government which gentlemen affect to despise. They have, sir, avoided a consolidation as the greatest of evils. They have lately, it is true, made one advance in that fatal progression. This misfortune burst on them by iniquity and artifice. That stadtholder, that executive magistrate, contrived it, in conjunction with other European nations. It was not the choice of the people. Was it owing to his

energy that this happened? If two provinces have paid nothing, what have not the rest done? And have not these two provinces made other exertions? Ought they, to avoid this inconvenience, to have consolidated their different States, and have a ten miles square? Compare that little spot, nurtured by liberty, with the fairest country in the world. Does not Holland possess a powerful navy and army, and a full treasury? They did not acquire these by debasing the principles and trampling on the rights of their citizens. Sir, they acquired these by their industry, economy, and by the freedom of their government. Their commerce is the most extensive in Europe; their credit is unequalled; their felicity will be an eternal monument of the blessings of liberty; every nation in Europe is taught by them what they are, and what they ought to be. The contrast between those nations and this happy people, is the most splendid spectacle for republicans, the greatest cause of exultation and triumph to the sons of freedom. While other nations, precipitated by the rage of ambition or folly, have, in the pursuit of the most magnificent projects, riveted the fetters of bondage on themselves and their descendants, these republicans have secured their political happiness and freedom. Where is there a nation to be compared to them? Where is there now, or where was there ever a nation, of so small a territory, and so few in number, so powerful, so wealthy, so happy? What is the cause of this superiority? Liberty, sir, the freedom of their government. Though they are now unhappily in some degree consolidated, yet they have my acclamations, when put in contrast with those millions of their fellow-men who lived and died slaves. The dangers of a consolidation ought to be guarded against in this country. I shall exert my poor talents to ward them off. Dangers are to be apprehended in whatever manner we proceed; but those of a consolidation are the most destructive. Let us leave no expedient untried to secure happiness; but whatever be our decision, I am consoled, if American liberty will remain entire only for half a century; and I trust that mankind in general, and our posterity in particular, will be compensated for every anxiety we now feel.

Another gentleman tells us, that no inconvenience will result from the exercise of the power of taxation by the general government; that two shillings out of ten may be saved by the impost; and that four shillings may be paid to the federal collector, and four to the State collector. A change of government will not pay money. If from the probable amount of the impost, you take the enormous and extravagant expenses, which will certainly attend the support of this great consolidated government, I believe you will find no reduction of the public burdens by this new system. The splendid maintenance of the president and of the members of both Houses; and the salaries and fees of the swarm of officers and dependants on the

government, will cost this continent immense sums. Double sets of collectors will double the expense. To these are to be added oppressive excisemen and custom-house officers. Sir, the people have an hereditary hatred to custom-house officers. The experience of the mother country leads me to detest them. They have introduced their baneful influence into the administration, and destroyed one of the most beautiful systems that ever the world saw. Our forefathers enjoyed liberty there, while that system was in its purity, but it is now contaminated by influence of every kind.

The style of the government (we the people) was introduced, perhaps, to recommend it to the people at large; to those citizens who are to be levelled and degraded to the lowest degree, who are likened to a herd, and who, by the operation of this blessed system, are to be transformed from respectable, independent citizens, to abject, dependent subjects or slaves. The honorable gentleman has anticipated what we are to be reduced to, by degradingly assimilating our citizens to a herd.

Here Mr. Randolph rose, and declared that he did not use that word to excite any odium, but merely to convey the idea of a multitude.

Mr. Henry replied, that it made a deep impression on his mind, and that he verily believed, that system would operate as he had said. [He then continued]—I will exchange that abominable word for requisitions; requisitions which gentlemen affect to despise, have nothing degrading in them. On this depends our political prosperity. I never will give up that darling word, requisitions; my country may give it up; a majority may wrest it from me, but I will never give it up till my grave. Requisitions are attended with one singular advantage. They are attended by deliberation. They secure to the States the benefit of correcting oppressive errors. If our assembly thought requisitions erroneous, if they thought the demand was too great, they might at least supplicate Congress to reconsider, that it was a little too much. The power of direct taxation was called by the honorable gentleman the soul of the government: another gentleman called it the lungs of the government. We all agree, that it is the most important part of the body politic. If the power of raising money be necessary for the general government, it is no less so for the States. If money be the vitals of Congress, is it not precious for those individuals from whom it is to be taken? Must I give my soul, my lungs, to Congress? Congress must have our souls; the State must have our souls. This is dishonorable and disgraceful. These two co-ordinate, interfering, unlimited powers of harassing the community, are unexampled—unprecedented in history; they are the visionary projects of modern politicians: tell me not of imaginary means, but of reality: this political solecism will never tend to the benefit of the community. It will be as oppressive in practice as it is absurd in theory. If you part from this,

which the honorable gentleman tells you is the soul of Congress, you will be inevitably ruined. I tell you, they shall not have the soul of Virginia. They tell us, that one collector may collect the federal and State taxes. The general government being paramount to the State legislatures, if the sheriff is to collect for both—his right hand for the Congress, his left for the State—his right hand being paramount over the left, his collections will go to Congress. We will have the rest. Deficiencies in collections will always operate against the States. Congress being the paramount, supreme power, must not be disappointed. Thus Congress will have an unlimited, unbounded command over the soul of this commonwealth. After satisfying their uncontrolled demands, what can be left for the States? Not a sufficiency even to defray the expense of their internal administration. They must therefore glide imperceptibly and gradually out of existence. This, sir, must naturally terminate in a consolidation. If this will do for other people, it never will do for me.

If we are to have one representative for every thirty thousand souls, it must be by implication. The constitution does not positively secure it. Even say it is a natural implication, why not give us a right to that proportion in express terms, in language that could not admit of evasions or subterfuges? If they can use implication for us, they can also use implication against us. We are giving power; they are getting power: judge, then, on which side the implication will be used. When we once put it in their option to assume constructive power, danger will follow. Trial by jury, and liberty of the press, are also on this foundation of implication. If they encroach on these rights, and you give your implication for a plea, you are cast; for they will be justified by the last part of it, which gives them full power "to make all laws which shall be necessary and proper to carry their powers into execution." Implication is dangerous, because it is unbounded: if it be admitted at all, and no limits be prescribed, it admits of the utmost extension. They say, that every thing that is not given is retained. The reverse of the proposition is true by implication. They do not carry their implication so far when they speak of the general welfare. No implication when the sweeping clause comes. Implication is only necessary when the existence of privileges is in dispute. The existence of powers is sufficiently established. If we trust our dearest rights to implication, we shall be in a very unhappy situation.

Implication in England has been a source of dissension. There has been a war of implication between the king and people. For one hundred years did the mother country struggle under the uncertainty of implication. The people insisted that their rights were implied: the monarch denied the doctrine. Their bill of rights in some degree terminated the dispute.

By a bold implication, they said they had a right to bind us in all cases whatsoever. This constructive power we opposed, and successfully. Thirteen or fourteen years ago, the most important thing that could be thought of, was to exclude the possibility of construction and implication. These, sir, were then deemed perilous. The first thing that was thought of, was a bill of rights. We were not satisfied with your constructive argumentative rights.

Mr. Henry then declared a bill of rights indispensable necessary; that a general positive provision should be inserted in the new system, securing to the States and the people every right which was not conceded to the general government; and that every implication should be done away. It being now late, he concluded by observing, that he would resume the subject another time.

On the 9th, Mr. Henry continued his remarks as follows:

MR. CHAIRMAN: I find myself again constrained to trespass on the patience of this committee. I wish there was a prospect of union in our sentiments; so much time would not then be taken up. But when I review the magnitude of the subject under consideration, and of the dangers which appear to me in this new plan of government, and compare thereto my poor abilities to secure our rights, it will take much more time, in my poor unconnected way, to traverse the objectionable parts of it; there are friends here who will be abler than myself to make good these objections which to us appear well founded. If we recollect, on last Saturday, I made some observations on some of those dangers, which these gentlemen would fain persuade us hang over the citizens of this commonwealth, to induce us to change the government, and adopt the new plan. Unless there be great and awful dangers, the change is dangerous, and the experiment ought not to be made. In estimating the magnitude of these dangers, we are obliged to take a most serious view of them, to feel them, to handle them, and to be familiar with them. It is not sufficient to feign mere imaginary dangers; there must be a dreadful reality. The great question between us is, does that reality exist? These dangers are partially attributed to bad laws, execrated by the community at large. It is said the people wish to change the government. I should be happy to meet them on that ground. Should the people wish to change it, we should be innocent of the dangers. It is a fact, that the people do not wish to change their government. How am I to prove it? It will rest on my bare assertion, unless supported by an internal conviction in men's breasts. My poor say-so is a mere nonentity. But, sir, I am persuaded that four-fifths of the people of Virginia must have amendments to the new plan, to reconcile them to a change of their government. Our assertions form but a slippery found-

dition for the people to rest their political salvation on. No government can flourish unless it be founded on the affection of the people. Unless gentlemen can be sure that this new system is founded on that ground, they ought to stop their career.

I will not repeat what the gentlemen say, but will mention one thing. There is a dispute between us and the Spaniards, about the right of navigating the Mississippi. This dispute has sprung from the federal government. I wish a great deal to be said on this subject. I wish to know the origin and progress of the business, as it would probably unfold great dangers. In my opinion, the preservation of that river calls for our most serious consideration. It has been agitated in Congress. Seven States have voted so as that it is known to the Spaniards, that under our existing system the Mississippi shall be taken from them. Seven States wished to relinquish this river to them. The six Southern States opposed it. Seven States not being sufficient to convey it away, it remains now ours. If I am wrong, there are a number on this floor who can contradict the facts; I will readily retract. This new government, I conceive, will enable those States, who have already discovered their inclination that way, to give away this river. Will the honorable gentleman advise us to relinquish this inestimable navigation, and place formidable enemies to our backs? This weak, this poor confederation cannot secure us. We are resolved to take shelter under the shield of federal authority in America. The southern parts of America have been protected by that weakness so much execrated. I hope this will be explained. I was not in Congress when these transactions took place. I may not have stated every fact. I may have misrepresented matters. I hope to be fully acquainted with every thing relative to the subject. Let us hear how the great and important right of navigating that river has been attended to; and whether I am mistaken in my opinion, that federal measures will lose it to us for ever. If a bare majority of Congress can make laws, the situation of our western citizens is dreadful.

We are threatened with danger for the non-payment of the debt due to France. We have information from an illustrious citizen of Virginia, who is now in Paris, which disproves the suggestions of such danger. This citizen has not been in the airy regions of theoretic speculation; our ambassador is this worthy citizen. The ambassador of the United States of America is not so despised as the honorable gentleman would make us believe. A servant of a republic is as much respected as that of a monarch. The honorable gentleman tells us, that hostile fleets are to be sent to make reprisals upon us; our ambassador tells you, that the king of France has taken into consideration to enter into commercial regulations on reciprocal terms with us, which will be of peculiar advantage to us. Does this look like hostility? I

might go further; I might say, not from public authority, but good information, that his opinion is, that you reject this government. His character and abilities are in the highest estimation; he is well acquainted, in every respect, with this country; equally so with the policy of the European nations. This illustrious citizen advises you to reject this government, till it be amended. His sentiments coincide entirely with ours. His attachment to, and services done for this country, are well known. At a great distance from us, he remembers and studies our happiness. Living amidst splendor and dissipation, he thinks yet of bills of rights—thinks of those little despised things called maxims. Let us follow the sage advice of this common friend of our happiness. It is little usual for nations to send armies to collect debts. The house of Bourbon, that great friend of America, will never attack her for the unwilling delay of payment. Give me leave to say, that Europe is too much engaged about objects of greater importance to attend to us. On that great theatre of the world the little American matters vanish. Do you believe, that the mighty monarch of France, beholding the greatest scenes that ever engaged the attention of a prince of that country, will divert himself from those important objects, and now call for a settlement of accounts with America? This proceeding is not warranted by good sense. The friendly disposition to us, and the actual situation of France, render the idea of danger from that quarter absurd. Would this countryman of ours be fond of advising us to a measure which he knew to be dangerous, and can it be reasonably supposed, that he can be ignorant of any premeditated hostility against this country? The honorable gentleman may suspect the account, but I will do our friend the justice to say that he would warn us of any danger from France.

Do you suppose the Spanish monarch will risk a contest with the United States, when his feeble colonies are exposed to them? Every advance the people here make to the westward, makes him tremble for Mexico and Peru. Despised as we are among ourselves under our present government, we are terrible to that monarchy. If this be not a fact, it is generally said so.

We are in the next place frightened by dangers from Holland. We must change our government to escape the wrath of that republic. Holland groans under a government like this new one. A stadtholder, sir, a Dutch president has brought on that country miseries which will not permit them to collect debts with fleets or armies. The wife of a Dutch stadtholder brought one hundred thousand men against that republic, and prostrated all opposition. This president will bring miseries on us like those of Holland. Such is the condition of European affairs, that it would be unsafe for them to send fleets or armies to collect debts. But here, sir, they make a transition to objects of another



kind. We are presented with dangers of a very uncommon nature. I am not acquainted with the arts of painting. Some gentlemen have a peculiar talent for them. They are practised with great ingenuity on this occasion. As a counterpart to what we have already been intimidated with, we are told, that some lands have been sold which cannot be found; and that this will bring war on this country. Here the picture will not stand examination. Can it be supposed, that if a few land speculators and jobbers have violated the principles of probity, that it will involve this country in war? Is there no redress to be otherwise obtained, even admitting the delinquents and sufferers to be numerous? When gentlemen are thus driven to produce imaginary dangers, to induce this convention to assent to this change, I am sure it will not be uncandid to say, that the change itself is really dangerous. Then the Maryland compact is broken, and will produce perilous consequences. I see nothing very terrible in this. The adoption of the new system will not remove the evil. Will they forfeit good neighborhood with us, because the compact is broken? Then the disputes concerning the Carolina line are to involve us in dangers. A strip of land running from the westward of the Alleghany to the Mississippi, is the subject of this pretended dispute. I do not know the length or breadth of this disputed spot. Have they not regularly confirmed our right to it and relinquished all claims to it? I can venture to pledge, that the people of Carolina will never disturb us. The strength of this despised country has settled an immense tract of country to the westward. Give me leave to remark, that the honorable gentleman's observations on our frontiers, north and south, east and west, are all inaccurate.

Will Maryland fight against this country for seeking amendments? Were there not sixty members in that State who went in quest of amendments? Sixty against eight or ten were in favor of pursuing amendments. Shall they fight us for doing what they themselves have done? They have sought amendments, but differently from the manner in which I wish amendments to be got. The honorable gentleman may plume himself on this difference. Will they fight us for this dissimilarity? Will they fight us for seeking the object they seek themselves? When they do, it will be time for me to hold my peace. Then, sir, comes Pennsylvania, in terrible array. Pennsylvania is to go in conflict with Virginia. Pennsylvania has been a good neighbor heretofore. She is federal—something terrible: Virginia cannot look her in the face. If we sufficiently attend to the actual situation of things, we will conclude that Pennsylvania will do what we do. A number of that country are strongly opposed to it. Many of them have lately been convinced of its fatal tendency. They are disgorged of their federalism. I beseech you to bring this matter home to yourselves. Was there a possibility for the people

of that State to know the reasons of adopting that system or understand its principles, in so very short a period after its formation? This is the middle of June. Those transactions happened last August. The matter was circulated by every effort of industry, and the most precipitate measures taken to hurry the people into an adoption. Yet now, after having had several months since to investigate it, a very large part of this community—a very great majority of this community, do not understand it. I have heard gentlemen of respectable abilities declare they did not understand it. If after great pains, men of high learning, who have received the aid of a regular education, do not understand it; if the people of Pennsylvania understood it in so short a time, it must have been from intuitive understandings, and uncommon acuteness of perception. Place yourselves in their situation; would you fight your neighbors for considering this great and awful matter? If you wish for real amendments, such as the security of the trial by jury, it will reach the hearts of the people of that State. Whatever may be the disposition of the aristocratical politicians of that country, I know there are friends of human nature in that State. If so, they will never make war on those who make professions of what they are attached to themselves.

As to the danger arising from borderers, it is mutual and reciprocal. If it be dangerous for Virginia, it is equally so for them. It will be their true interest to be united with us. The danger of our being their enemies, will be a prevailing argument in our favor. It will be as powerful to admit us into the Union, as a vote of adoption without previous amendments could possibly be.

Then the savage Indians are to destroy us. We cannot look them in the face. The danger is here divided; they are as terrible to the other States as to us: but, sir, it is well known that we have nothing to fear from them. Our back settlers are considerably stronger than they, and their superiority increases daily. Suppose the States to be confederated all around us, what we want in number, we shall make up otherwise. Our compact situation and natural strength will secure us. But to avoid all dangers, we must take shelter under the federal government. Nothing gives a decided importance but this federal government. You will sip sorrow, according to the vulgar phrase, if you want any other security than the laws of Virginia.

A number of characters of the greatest eminence in this country, object to this government, for its consolidating tendency. This is not imaginary. It is a formidable reality. If consolidation proves to be as mischievous to this country as it has been to other countries, what will the poor inhabitants of this country do? This government will operate like an ambuscade. It will destroy the State governments, and swallow up the liberties of the people, without giving them previous notice.



If gentlemen are willing to run the hazard, let them run it; but I shall exculpate myself by my opposition, and monitory warnings within these walls. But then comes paper money. We are at peace on this subject. Though this is a thing which that mighty federal convention had no business with, yet I acknowledge that paper money would be the bane of this country. I detest it. Nothing can justify a people in resorting to it, but extreme necessity. It is at rest, however, in this commonwealth. It is no longer solicited or advocated.

Sir, I ask you, and every other gentleman who hears me, if he can restrain his indignation at a system, which takes from the State legislatures the care and preservation of the interests of the people; one hundred and eighty representatives, the choice of the people of Virginia, cannot be trusted with their interests. They are a mobbish, suspected herd. This country has not virtue enough to manage its own internal interests. These must be referred to the chosen ten. If we cannot be trusted with the private contracts of the citizens, we must be depraved indeed. If he can prove, that, by one uniform system of abandoned principles, the legislature has betrayed the rights of the people, then let us seek another shelter. So degrading an indignity—so flagrant an outrage on the States—so vile a suspicion is humiliating to my mind, and many others.

Will the adoption of this new plan pay our debts? This, sir, is a plain question. It is inferred, that our grievances are to be redressed, and the evils of the existing system to be removed by the new constitution. Let me inform the honorable gentleman, that no nation ever paid its debts by a change of government, without the aid of industry. You never will pay your debts but by a radical change of domestic economy. At present, you buy too much, and make too little to pay. Will this new system promote manufactures, industry, and frugality? If, instead of this, your hopes and designs will be disappointed, you relinquish a great deal, and hazard infinitely more for nothing. Will it enhance the value of your lands? Will it lessen your burdens? Will your looms and wheels go to work by the act of adoption? If it will in its consequences produce these things, it will consequently produce a reform, and enable you to pay your debts. Gentlemen must prove it. I am a sceptic—an infidel on this point. I cannot conceive that it will have these happy consequences. I cannot confide in assertions and allegations. The evils that attend us, lie in extravagance and want of industry, and can only be removed by assiduity and economy. Perhaps we shall be told by gentlemen, that these things will happen, because the administration is to be taken from us, and placed in the hands of the luminous few, who will pay different attention, and be more studiously careful than we can be supposed to be.

With respect to the economical operation of the new government, I will only remark, that

the national expenses will be increased—if not doubled, it will approach it very near. I might, without incurring the imputation of illiberality or extravagance, say, that the expense will be multiplied tenfold. I might tell you of a numerous standing army; a great, powerful navy; a long and rapacious train of officers and dependents, independent of the president, senators and representatives, whose compensations are without limitation. How are our debts to be discharged unless the taxes are increased, when the expenses of government are so greatly augmented? The defects of this system are so numerous and palpable, and so many States object to it, that no union can be expected, unless it be amended. Let us take a review of the facts. New Hampshire and Rhode Island have rejected it. They have refused to become federal. New York and North Carolina are reported to be strongly against it. From high authority, give me leave to tell, that New York is in high opposition. Will any gentleman say that North Carolina is not against it? They may say so, but I say that the adoption of it, in those two States, amounts to entire uncertainty. The system must be amended before these four States will accede to it. Besides there are several other States who are dissatisfied, and wish alterations. Massachusetts has, in decided terms, proposed amendments; but by her previous ratification, has put the cart before the horse. Maryland instituted a committee to propose amendments. It then appears, that two States have actually refused to adopt—two of those who have adopted, have a desire of amending. And there is a probability of its being rejected by New York and North Carolina. The other States have acceded without proposing amendments. With respect to them, local circumstances have, in my judgment, operated to produce its unconditional, instantaneous adoption. The locality of the seat of government, ten miles square, and the seat of justice, with all their concomitant emoluments, operated so powerfully with the first adopting State, that it was adopted without taking time to reflect. We are told that numerous advantages will result from the concentration of the wealth and grandeur of the United States in one happy spot, to those who will reside in or near it. Prospects of profit and emoluments have a powerful influence on the human mind. We, sir, have no such projects as that of a grand seat of government for thirteen States, and perhaps for one hundred States hereafter. Connecticut and New Jersey have their localities also. New York lies between them. They have no ports, and are not importing States. New York is an importing State, and taking advantage of its situation, makes them pay duties for all the articles of their consumption: thus, these two States being obliged to import all they want, through the medium of New York, pay the particular taxes of that State. I know the force and effect of reasoning of this sort, by experience. When

the impost was proposed some years ago, those States which were not importing States, readily agreed to concede to Congress, the power of laying an impost on all goods imported for the use of the continental treasury. Connecticut and New Jersey therefore, are influenced by advantages of trade in their adoption. The amounts of all imposts are to go into one common treasury. This favors adoption by the non-importing States; as they participate in the profits which were before exclusively enjoyed by the importing States. Notwithstanding this obvious advantage to Connecticut, there is a formidable minority there against it. After taking this general review of American affairs, as respecting federalism, will the honorable gentleman tell me, that he can expect union in America? When so many States are pointedly against it; when two adopting States have pointed out, in express terms, their dissatisfaction as it stands; and when there is so respectable a body of men discontented in every State; can the honorable gentleman promise himself harmony, of which he is so fond? If he can, I cannot. To me it appears unequivocally clear, that we shall not have that harmony. If it appears to the other States, that our aversion is founded on just grounds, will they not be willing to indulge us? If disunion will really result from Virginia's proposing amendments, will they not wish the re-establishment of the Union, and admit us, if not on such terms as we prescribe, yet on advantageous terms? Is not union as essential to their happiness, as to ours? Sir, without a radical alteration, the States will never be embraced in one federal pale. If you attempt to force it down men's throats and call it union, dreadful consequences must follow.

He has said a great deal about disunion and the dangers that are to arise from it. When we are on the subject of union and dangers, let me ask, how will his present doctrine hold with what has happened? Is it consistent with that noble and disinterested conduct which he displayed on a former occasion? Did he not tell us that he withheld his signature? Where then were the dangers which now appear to him so formidable? He saw all America eagerly confiding that the result of their deliberations would remove their distresses. He saw all America acting under the impulses of hope, expectation and anxiety, arising from their situation and their partiality for the members of that convention: yet his enlightened mind, knowing that system to be defective, magnanimously and nobly refused its approbation. He was not led by the illumined—the illustrious few. He was actuated by the dictates of his own judgment; and a better judgment than I can form. He did not stand out of the way of information. He must have been possessed of every intelligence. What alterations have a few months brought about? The internal difference between right and wrong does not fluctuate. It is immutable. I ask this question as a

public man, and out of no particular view. I wish, as such, to consult every source of information, to form my judgment on so awful a question. I had the highest respect for the honorable gentleman's abilities. I considered his opinion as a great authority. He taught me, sir, in despite of the approbation of that great federal convention, to doubt of the propriety of that system. When I found my honorable friend in the number of those who doubted, I began to doubt also. I coincided with him in opinion. I shall be a staunch and faithful disciple of his. I applaud that magnanimity which led him to withhold his signature. If he thinks now differently, he is as free as I am. Such is my situation, that as a poor individual, I look for information every where.

This government is so new, it wants a name. I wish its other novelties were as harmless as this. He told us we had an American dictator in the year 1781. We never had an American president. In making a dictator, we followed the example of the most glorious, magnanimous and skilful nations. In great dangers this power has been given. Rome had furnished us with an illustrious example. America found a person worthy of that trust: she looked to Virginia for him. We gave a dictatorial power to hands that used it gloriously; and which were rendered more gloriously by surrendering it up. Where is there a breed of such dictators? Shall we find a set of American presidents of such a breed? Will the American president come and lay prostrate at the feet of Congress his laurels? I fear there are few men who can be trusted on that head. The glorious republic of Holland has erected monuments to her warlike intrepidity and valor: yet she is now totally ruined by a stadtholder; a Dutch president. The destructive wars into which that nation has been plunged, has since involved her in ambition. The glorious triumphs of Blenheim and Ramillies were not so conformable to the genius, nor so much to the true interest of the republic, as those numerous and useful canals and dykes, and other objects at which ambition spurns. That republic has, however, by the industry of its inhabitants, and policy of its magistrates, suppressed the ill effects of ambition. Notwithstanding two of their provinces have paid nothing, yet I hope the example of Holland will tell us that we can live happily without changing our present despised government. Cannot people be as happy under a mild, as under an energetic government? Cannot content and felicity be enjoyed in a republic, as well as in a monarchy, because there are whips, chains and scourges used in the latter? If I am not as rich as my neighbor, if I give my mite, my all, republican forbearance will say, that it is sufficient. So said the honest confederates of Holland: "You are poor; we are rich. We will go on and do better, far better, than be under an oppressive government." Far better will it be for us to continue as we are, than go under that

tight, energetic government. I am persuaded of what the honorable gentleman says, that separate confederacies will ruin us. In my judgment, they are evils never to be thought of till a people are driven by necessity. When he asks my opinion of consolidation, of one power to reign over America, with a strong hand, I will tell him I am persuaded of the rectitude of my honorable friend's opinion, (Mr. Mason,) that one government cannot reign over so extensive a country as this is, without absolute despotism. Compared to such a consolidation, small confederacies are little evils, though they ought to be recurred to but in case of necessity. Virginia and North Carolina are despised. They could exist separated from the rest of America. Maryland and Vermont were not overrun when out of the confederacy. Though it is not a desirable object, yet, I trust, that on examination it will be found, that Virginia and North Carolina would not be swallowed up in case it was necessary for them to be joined together.

When we come to the spirit of domestic peace, the humble genius of Virginia has formed a government, suitable to the genius of her people. I believe the hands that formed the American constitution, triumph in the experiment. It proves that the man who formed it, and perhaps by accident, did what design could not do in other parts of the world. After all your reforms in government, unless you consult the genius of the inhabitants, you will never succeed; your system can have no duration. Let me appeal to the candor of the committee, if the want of money be not the source of all misfortunes. We cannot be blamed for not making dollars. This want of money cannot be supplied by changes in government. The only possible remedy, as I have before asserted, is industry aided by economy. Compare the genius of the people with the government of this country. Let me remark; that it stood the severest conflict, during the war, to which human virtue has ever been called. I call upon every gentleman here to declare, whether the King of England had any subjects so attached to his family and government—so loyal as we were. But the genius of Virginia called us for liberty; called us from those beloved endearments which, from long habits, we were taught to love and revere. We entertained from our earliest infancy, the most sincere regard and reverence for the mother country. Our partiality extended to a predilection for her customs, habits, manners and laws. Thus inclined, when the deprivation of our liberty was attempted, what did we do? What did the genius of Virginia tell us? "Sell all, and purchase liberty." This was a severe conflict. Republican maxims were then esteemed. Those maxims, and the genius of Virginia, landed you safe on the shore of freedom. On this awful occasion, did you want a federal government? Did federal ideas possess your minds? Did federal ideas lead you to the most splendid vic-

tories? I must again repeat the favorite idea, that the genius of Virginia did, and will again lead us to happiness. To obtain the most splendid prize, you did not consolidate. You accomplished the most glorious ends, by the assistance of the genius of your country. Men were then taught by that genius, that they were fighting for what was most dear to them. View the most affectionate father, the most tender mother, operated on by liberty, nobly stimulating their sons, their dearest sons, sometimes their only son, to advance to the defence of his country. We have seen sons of Cincinnatus, without splendid magnificence or parade, going, with the genius of their great progenitor Cincinnatus, to the plough—men who served their country without ruining it; men who had served it to the destruction of their private patrimonies; their country owing them amazing amounts, for the payment of which no adequate provision was then made. We have seen such men throw prostrate their arms at your feet. They did not call for those emoluments which ambition presents to some imaginations. The soldiers, who were able to command every thing, instead of trampling on those laws which they were instituted to defend, most strictly obeyed them. The hands of justice have not been laid on a single American soldier. Bring them into contrast with European veterans—you will see an astonishing superiority over the latter. There has been a strict subordination to the laws. The honorable gentleman's office gave him an opportunity of viewing if the laws were administered so as to prevent riots, routs, and unlawful assemblies. From his then situation, he could have furnished us with the instances in which licentiousness trampled on the laws. Among all our troubles, we have paid almost to the last shilling, for the sake of justice: we have paid as well as any State; I will not say better. To support the general government and our own legislature; to pay the interest of the public debts, and defray contingencies, we have been heavily taxed. To add to these things, the distresses produced by paper money, and by tobacco contracts, were sufficient to render any people discontented. These, sir, were great temptations; but in the most severe conflict of misfortunes, this code of laws—this genius of Virginia, call it what you will, triumphed over every thing.

Why did it please the gentleman, (Mr. Corbin,) to bestow such epithets on our country? Have the worms taken possession of the wood, that our strong vessel—our political vessel, has sprung a leak? He may know better than I, but I consider such epithets to be the most illiberal and unwarrantable aspersions on our laws. The system of laws under which we have lived, has been tried and found to suit our genius. I trust we shall not change this happy system. I cannot so easily take leave of an old friend. Till I see him following after and pursuing other objects, which can pervert the great

objects of human legislation, pardon me if I withhold my assent.

Some here speak of the difficulty in forming a new code of laws. Young as we were, it was not wonderful if there was a difficulty in forming and assimilating our system of laws. I shall be obliged to the gentleman, if he would point out those glaring, those great faults. The efforts of assimilating our laws to our genius have not been found altogether vain. I shall pass over some other circumstances which I intended to mention, and endeavor to come to the capital objection, which my honorable friend made. My worthy friend said, that a republican form of government would not suit a very extensive country; but that if a government were judiciously organized and limits prescribed to it, an attention to these principles might render it possible for it to exist in an extensive territory. Whoever will be bold to say, that a continent can be governed by that system, contradicts all the experience of the world. It is a work too great for human wisdom. Let me call for an example. Experience has been called the best teacher. I call for an example of a great extent of country, governed by one government, or Congress, call it what you will. I tell him that a government may be trimmed up according to gentlemen's fancy, but it never can operate; it will be but very short lived. However disagreeable it may be to lengthen my objections, I cannot help taking notice of what the honorable gentleman said. To me it appears that there is no check in that government. The president, senators and representatives, all immediately, or mediately, are the choice of the people. Tell me not of checks on paper; but tell me of checks founded on self-love. The English government is founded on self-love. This powerful, irresistible stimulus of self-love has saved that government. It has interposed that hereditary nobility between the king and the commons. If the House of Lords assists or permits the king to overturn the liberties of the people, the same tyranny will destroy them; they will therefore keep the balance in the democratic branch. Suppose they see the Commons encroach upon the king; self-love, that great, energetic check, will call upon them to interpose; for, if the king be destroyed, their destruction must speedily follow. Here is a consideration which prevails in my mind, to pronounce the British government superior, in this respect, to any government that ever was in any country. Compare this with your Congressional checks. I beseech gentlemen to consider whether they can say, when trusting power, that a mere patriotic profession will be equally operative and efficacious, as the check of self-love. In considering the experience of ages, is it not seen that fair, disinterested patriotism and professions of attachment to rectitude, have never been solely trusted to by an enlightened, free people? If you depend on your presidents' and senators' patriotism, you are

gone. Have you a resting place like the British government? Where is the rock of your salvation? The real rock of political salvation is self-love, perpetuated from age to age in every human breast, and manifested in every action. If they can stand the temptations of human nature, you are safe. If you have a good president, senators and representatives, there is no danger. But can this be expected from human nature? Without real checks, it will not suffice that some of them are good. A good president, or senator, or representative will have a natural weakness. Virtue will slumber: the wicked will be continually watching: consequently you will be undone. Where are your checks? You have no hereditary nobility—an order of men, to whom human eyes can be cast up for relief: for, says the constitution, there is no title of nobility to be granted; which, by the by, would not have been so dangerous, as the perilous cession of the powers contained in that paper: because, as Montesquieu says, when you give titles of nobility, you know what you give; but when you give power, you know not what you give. If you say, that out of this depraved mass, you can collect luminous characters, it will not avail, unless this luminous breed will be propagated from generation to generation; and even then, if the number of vicious characters will preponderate, you are undone. And that this will certainly be the case, is, to my mind, perfectly clear. In the British government, there are real balances and checks; in this system, there are only ideal balances. Till I am convinced that there are actual, efficient checks, I will not give my assent to its establishment. The president and senators have nothing to lose. They have not that interest in the preservation of the government, that the king and lords have in England. They will therefore be regardless of the interests of the people. The constitution will be as safe with one body, as with two. It will answer every purpose of human legislation. How was the constitution of England when only the commons had the power? I need only remark, that it was the most unfortunate era when the country returned to king, lords and commons, without sufficient responsibility in the king. When the commons of England, in the manly language which became freemen, said to their king, you are our servant, then the temple of liberty was complete. From that noble source have we derived our liberty: that spirit of patriotic attachment to one's country, that zeal for liberty, and that enmity to tyranny, which signalized the then champions of liberty, we inherit from our British ancestors. And I am free to own, that if you cannot love a republican government, you may love the British monarchy: for, although the king is not sufficiently responsible, the responsibility of his agents, and the efficient checks interposed by the British constitution, render it less dangerous than other monarchies, or oppressive tyrannical aristocracies. What are their checks of exposing accounts? Their

checks upon paper are inefficient and nugatory. Can you search your president's closet? Is this a real check? We ought to be exceedingly cautious in giving up this life, this soul—our money—this power of taxation to Congress. What powerful check is there here to prevent the most extravagant and profligate squandering of the public money? What security have we in money matters? Inquiry is precluded by this constitution. I never wish to see Congress supplicate the States. But it is more abhorrent to my mind to give them an unlimited and unbounded command over our souls, our lives, our purses, without any check or restraint. How are you to keep inquiry alive? How discover their conduct? We are told by that paper, that a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time. Here is a beautiful check! What time? Here is the utmost latitude left. If those who are in Congress please to put that construction upon it, the words of the constitution will be satisfied by publishing those accounts once in one hundred years. They may publish or not, as they please. Is this like the present despised system, whereby the accounts are to be published monthly?

I come now to speak something of requisitions, which the honorable gentleman thought so truly contemptible and disgraceful. That honorable gentleman being a child of the Revolution, must recollect with gratitude the glorious effects of requisitions. It is an idea that must be grateful to every American. An English army was sent to compel us to pay money contrary to our consent. To force us by arbitrary and tyrannical coercion to satisfy their unbounded demands. We wished to pay with our own consent. Rather than pay against our consent, we engaged in that bloody contest which terminated so gloriously. By requisitions we pay with our own consent; by their means we have triumphed in the most arduous struggle that ever tried the virtue of man. We fought then, for what we are contending now—to prevent an arbitrary deprivation of our property, contrary to our consent and inclination. I shall be told in this place, that those who are to tax us are our representatives. To this I answer, that there is no real check to prevent their ruining us. There is no actual responsibility. The only semblance of a check is the negative power of not re-electing them. This, sir, is but a feeble barrier, when their personal interest, their ambition and avarice come to be put in contrast with the happiness of the people. All checks founded on any thing but self-love, will not avail. This constitution reflects, in the most degrading and mortifying manner, on the virtue, integrity and wisdom of the State legislatures: it presupposes that the chosen few who go to Congress, will have more upright hearts, and more enlightened minds, than those who are members of the individual legislatures. To suppose that ten gentlemen shall have more

real substantial merit, than one hundred and seventy, is humiliating to the last degree. If, sir, the diminution of numbers be an augmentation of merit, perfection must centre in one. If you have the faculty of discerning spirits, it is better to point out at once the man who has the most illumined qualities. If ten men be better than one hundred and seventy, it follows of necessity that one is better than ten—the choice is more refined.

Such is the danger of the abuse of implied power, that it would be safer at once to have seven representatives, the number to which we are now entitled, than depend on the uncertain and ambiguous language of that paper. The number may be lessened instead of being increased; and yet by argumentative, constructive, implied power, the proportion of taxes may continue the same or be increased. Nothing is more perilous than constructive power, which gentlemen are so willing to trust their happiness to.

If sheriffs prove now an over-match for our legislature; if their ingenuity has eluded the vigilance of our laws, how will the matter be amended when they come clothed with federal authority? A strenuous argument offered by gentlemen is, that the same sheriffs may collect for the continental and State treasuries. I have before shown, that this must have an inevitable tendency to give a decided preference to the federal treasury in the actual collections, and to throw all deficiencies on the State. This imaginary remedy for the evil of congressional taxation, will have another oppressive operation. The sheriff comes to-day as a State collector—next day he is federal—how are you to fix him? How will it be possible to discriminate oppressions committed in one capacity, from those perpetrated in the other? Will not his ingenuity perplex the simple, honest planter? This will at least involve in difficulties, those who are unacquainted with legal ingenuity. When you fix him, where are you to punish him? For, I suppose, they will not stay in our courts: they must go to the federal court; for, if I understand that paper right, all controversies arising under that constitution, or under the laws made in pursuance thereof, are to be tried in that court. When gentlemen told us, that this part deserved the least exception, I was in hopes they would prove that there was plausibility in their suggestions, and that oppression would probably not follow. Are we not told, that it shall be treason to levy war against the United States? Suppose an insult offered to the federal laws at an immense distance from Philadelphia, will this be deemed treason? And shall a man be dragged many hundred miles to be tried as a criminal, for having, perhaps justifiably, resisted an unwarrantable attack upon his person or property? I am not well acquainted with federal jurisprudence; but it appears to me that these oppressions must result from this part of the plan. It is at least doubtful, and where there is ever

a possibility of such evils, they ought to be guarded against.

There are to be a number of places fitted out for arsenals and dock-yards in the different States. Unless you sell to Congress such places as are proper for these, within your State, you will not be consistent after adoption; it results therefore clearly that you are to give into their hands, all such places as are fit for strongholds. When you have these fortifications and garisons within your State, your legislature will have no power over them, though they see the most dangerous insults offered to the people daily. They are also to have magazines in each State; these depositories for arms, though within the State, will be free from the control of its legislature. Are we at last brought to such a humiliating and debasing degradation, that we cannot be trusted with arms for our own defence? There is a wide difference between having our arms in our own possession and under our own direction, and having them under the management of Congress. If our defence be the real object of having those arms, in whose hands can they be trusted with more propriety, or equal safety to us, as in our own? If our legislature be unworthy of legislating for every foot in this State, they are unworthy of saying another word.

The clause which says that Congress shall "provide for arming, organizing and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers," seemed to put the States in the power of Congress. I wished to be informed, if Congress neglected to discipline them, whether the States were not precluded from doing it. Not being favored with a particular answer, I am confirmed in my opinion, that the States have not the power of disciplining them, without recurring to the doctrine of constructive, implied powers. If by implication the States may discipline them, by implication also Congress may officer them; because, in a partition of power, each has a right to come in for part; and because implication is to operate in favor of Congress on all occasions, where their object is the extension of power, as well as in favor of the States. We have not one-fourth of the arms that would be sufficient to defend ourselves. The power of arming the militia, and the means of purchasing arms, are taken from the States by the paramount powers of Congress. If Congress will not arm them, they will not be armed at all.

There have been no instances shown of a voluntary cession of power, sufficient to induce me to grant the most dangerous powers: a possibility of their future relinquishment will not persuade me to yield such powers.

Congress, by the power of taxation, by that of raising an army, and by their control over the militia, have the sword in one hand and the purse in the other. Shall we be safe without either? Congress have an unlimited power

over both: they are entirely given up by us. Let him candidly tell me, where and when did freedom exist, when the sword and purse were given up by the people? Unless a miracle in human affairs interposed, no nation ever retained its liberty after the loss of the sword and purse. Can you prove by any argumentative deduction, that it is possible to be safe without retaining one of these? If you give them up, you are gone. Give us at least a plausible apology why Congress should keep their proceedings in secret. They have the power of keeping them secret as long as they please; for the provision for a periodical publication is too inexplicit and ambiguous to avail any thing. The expression, from time to time, as I have more than once observed, admits of any extension. They may carry on the most wicked and pernicious of schemes under the dark veil of secrecy. The liberties of a people never were nor ever will be secure, when the transactions of their rulers may be concealed from them. The most iniquitous plots may be carried on against their liberty and happiness. I am not an advocate for divulging indiscriminately all the operations of government, though the practice of our ancestors in some degree justifies it. Such transactions as relate to military operations, or affairs of great consequence, the immediate promulgation of which might defeat the interests of the community, I would not wish to be published, till the end which required their secrecy should have been effected. But to cover, with the veil of secrecy, the common routine of business, is an abomination in the eyes of every intelligent man, and every friend to his country.

[Mr. Henry then, in a very animated manner, expatiated on the evil and pernicious tendency of keeping secret the common proceedings of government, and said, that it was contrary to the practice of other free nations. The people of England, he asserted, had gained immortal honor, by the manly boldness wherewith they divulged to all the world their political disquisitions and operations; and that such a conduct inspired other nations with respect. He illustrated his arguments by several quotations.] He then continued:—

I appeal to this convention, if it would not be better for America to take off the veil of secrecy. Look at us—hear our transactions. If this had been the language of the federal convention, what would have been the result? Such a constitution would not have come out to your utter astonishment, conceding such dangerous powers, and recommending secrecy in the future transactions of government. I believe it would have given more general satisfaction, if the proceedings of that convention had not been concealed from the public eye. This constitution authorizes the same conduct. There is not an English feature in it. The transactions of Congress may be concealed a century from the public consistently with the constitution. This, sir, is a laudable imitation

of the transactions of the Spanish treaty. We have not forgotten with what a thick veil of secrecy those transactions were covered.

We are told that this government, collectively taken, is without an example; that it is national in this part, and federal in that part, &c. We may be amused, if we please, by a treatise of political anatomy. In the brain it is national: the *stamina* are federal—some limbs are federal, others national. The senators are voted for by the State legislatures; so far it is federal. Individuals choose the members of the first branch; here it is national. It is federal in conferring general powers, but national in retaining them. It is not to be supported by the States—the pockets of individuals are to be searched for its maintenance. What signifies it to me, that you have the most curious anatomical description of it in its creation? To all the common purposes of legislation it is a great consolidation of government. You are not to have the right to legislate in any but trivial cases: you are not to touch private contracts: you are not to have the right of having arms in your own defence: you cannot be trusted with dealing out justice between man and man. What shall the States have to do?—Take care of the poor, repair and make highways, erect bridges, and so on and so on. Abolish the State legislatures at once. What purposes should they be continued for? Our legislature will indeed be a ludicrous spectacle—one hundred and eighty men marching in solemn, farcical procession, exhibiting a mournful proof of the lost liberty of their country, without the power of restoring it. But, sir, we have the consolation, that it is a mixed government; that is, it may work sorely on your neck, but you will have some comfort by saying, that it was a federal government in its origin.

I beg gentlemen to consider; lay aside your prejudices—is this a federal government? Is it not a consolidated government for every purpose almost? Is the government of Virginia a State government, after this government is adopted? I grant that it is a republican government; but for what purposes? For such trivial, domestic considerations, as render it unworthy the name of a legislature. I shall take leave of this political anatomy by observing, that it is the most extraordinary that ever entered into the imagination of man. If our political diseases demand a cure, this is an unheard of medicine. The honorable member, I am convinced, wanted a name for it. Were your health in danger, would you take new medicine? I need not make use of these exclamations; for every member in this committee must be alarmed at making new and unusual experiments in government. Let us have national credit and a national treasury in case of war. You never can want national resources in time of war, if the war be a national one, if it be necessary, and this necessity be obvious to the meanest capacity. The utmost exertions will be used by the people of America in that

case. A republic has this advantage over a monarchy, that its wars are generally founded on more just grounds. A republic can never enter into a war, unless it be a national war, unless it be approved of, or desired by the whole community. Did ever a republic fail to use the utmost resources of the community when a war was necessary? I call for an example. I call also for an example, when a republic has been engaged in a war contrary to the wishes of its people. There are thousands of examples where the ambition of its prince has precipitated a nation into the most destructive war. No nation ever withheld power when its object was just and right. I will hazard an observation: I find fault with the paper before you, because the same power that declares war, has the ability to carry it on. Is it so in England? The king declares war: the house of commons gives the means of carrying it on. This is a strong check on the king. He will enter into no war that is unnecessary; for the commons, having the power of withholding the means, will exercise that power, unless the object of the war be for the interest of the nation. How is it here? The Congress can both declare war and carry it on, and levy your money as long as you have a shilling to pay.

I shall now speak a little of the colonial confederacy which was proposed at Albany. Massachusetts did not give her consent to the project at Albany so as to consolidate with the other colonies. Had there been a consolidation at Albany, where would have been their charter? Would that confederacy have preserved their charter from Britain? The strength and energy of the then designed government would have crushed American opposition.

The American revolution took its origin from the comparative weakness of the British government, not being concentrated into one point. A concentration of the strength and interest of the British government in one point, would have rendered opposition to its tyrannies fruitless. For want of that consolidation do we now enjoy liberty, and the privilege of debating at this moment. I am pleased with the colonial establishment. The example which the honorable member has produced to persuade us to depart from our present confederacy, rivets me to my former opinion, and convinces me that consolidation must end in the destruction of our liberties.

The honorable gentleman has told us of our ingratitude to France. She does not intend to take payment by force. Ingratitude shall not be laid to my charge. I wish to see the friendship between this country and that magnanimous ally perpetuated. Requisitions will enable us to pay the debts we owe to France and other countries. She does not desire us to go from our beloved republican government. The change is inconsistent with our engagements with those nations. It is cried out, that those in opposition wish disunion. This is not



true. They are the most strenuous friends to it. This government will clearly operate disunion. If it be heard on the other side of the Atlantic, that you are going to disunite and dissolve the confederacy, what says France? Will she be indifferent to an event that will so radically affect her treaties with us? Our treaty with her is founded on the confederation—we are bound to her as thirteen States confederated. What will become of the treaty? It is said that treaties will be on a better footing. How so? Will the President, Senate, and House of Representatives be parties to them? I cannot conceive how the treaties can be as binding, if the confederacy is dissolved, as they are now. Those nations will not continue their friendship then; they will become our enemies. I look on the treaties as the greatest pillars of safety. If the house of Bourbon keeps us, we are safe. Dissolve that confederacy—who has you?—The British. Federalism will not protect you from the British. Is a connection with that country more desirable? I was amazed when gentlemen forgot the friends of America. I hope that this dangerous change will not be effected. It is safe for the French and Spaniards, that we should continue to be thirteen States; but it is not so, that we should be consolidated into one government. They have settlements in America; will they like schemes of popular ambition? Will they not have some serious reflections? You may tell them you have not changed your situation; but they will not believe you. If there be a real check intended to be left on Congress, it must be left in the State governments. There will be some check, as long as the judges are incorrupt. As long as they are upright, you may preserve your liberty. But what will the judges determine when the State and federal authority come to be contrasted? Will your liberty then be secure, when the congressional laws are declared paramount to the laws of your State, and the judges are sworn to support them?

I am constrained to make a few remarks on the absurdity of adopting this system, and relying on the chance of getting it amended afterwards. When it is confessed to be replete with defects, is it not offering to insult your understandings, to attempt to reason you out of the propriety of rejecting it, till it be amended? Does it not insult your judgments to tell you—adopt first, and then amend? Is your rage for novelty so great, that you are first to sign and seal, and then to retract? Is it possible to conceive a greater solecism? I am at a loss what to say. You agree to bind yourselves hand and foot—for the sake of what? Of being unbound. You go into a dungeon—for what? To get out. Is there no danger when you go in, that the bolts of federal authority shall shut you in? Human nature never will part from power. Look for an example of a voluntary relinquishment of power, from one end of the globe to another—you will find none. Ninetenths of our fellow-men have been, and are

now, depressed by the most intolerable slavery, in the different parts of the world; because the strong hand of power has bolted them in the dungeon of despotism. Review the present situation of the nations of Europe, which is pretended to be the freest quarter of the globe. Cast your eyes on the countries called free there. Look at the country from which we are descended, I beseech you; and although we are separated by everlasting, insuperable partitions, yet there are some virtuous people there who are friends to human nature and liberty. Look at Britain; see there the bolts and bars of power; see bribery and corruption defiling the fairest fabric that ever human nature reared. Can a gentleman, who is an Englishman, or who is acquainted with the English history, desire to prove these evils? See the efforts of a man descended from a friend of America; see the efforts of that man, assisted even by the king, to make reforms. But you find the faults too strong to be amended. Nothing but bloody war can alter them. See Ireland: that country groaning from century to century, without getting their government amended. Previous adoption was the fashion there. They sent for amendments from time to time, but never obtained them, though pressed by the severest oppression, till eighty thousand volunteers demanded their sword in hand—till the power of Britain was prostrate; when the American resistance was crowned with success. Shall we do so? If you judge by the experience of Ireland, you must obtain the amendments as early as possible. But, I ask you again, where is the example that a government was amended by those who instituted it? Where is the instance of the errors of a government rectified by those who adopted them?

I shall make a few observations to prove that the power over elections, which is given to Congress, is contrived by the federal government; that the people may be deprived of their proper influence in the government, by destroying the force and effect of their suffrages. Congress is to have a discretionary control over the time, place and manner of elections. The representatives are to be elected consequently when and where they please. As to the time and place, gentlemen have attempted to obviate the objection, by saying that the time is to happen once in two years, and that the place is to be within a particular district, or in the respective counties. But how will they obviate the danger of referring the manner of election to Congress? Those illumined *genii* may see that this may not endanger the rights of the people; but to my unenlightened understanding, it appears plain and clear, that it will impair the popular weight of the government. Look at the Roman history. They had two ways of voting: the one by tribes, and the other by centuries. By the former, numbers prevailed: in the latter, riches preponderated. According to the mode prescribed, Congress may tell you, that they have a right to make the vote of one gen-



tleman go as far as the votes of one hundred poor men. The power over the manner admits of the most dangerous latitude. They may modify it as they please. They may regulate the number of votes by the quantity of property, without involving any repugnancy to the constitution. I should not have thought of this trick or contrivance, had I not seen how the public liberty of Rome was trifled with by the mode of voting by centuries, whereby one rich man had as many votes as a multitude of poor men. The plebeians were trampled on till they resisted. The patricians trampled on the liberties of the plebeians, till the latter had spirit to assert their right to freedom and equality. The result of the American mode of election may be similar. Perhaps I shall be told, that I have gone through the regions of fancy; that I deal in noisy exclamations, and mighty professions of patriotism. Gentlemen may retain their opinions; but I look on that paper as the most fatal plan that could possibly be conceived to enslave a free people. If such be your rage for novelty, take it and welcome, but you never shall have

my consent. My sentiments may appear extravagant, but I can tell you, that a number of my fellow-citizens have kindred sentiments; and I am anxious, if my country should come into the hands of tyranny, to exculpate myself from being in any degree the cause; and to exert my faculties to the utmost to extricate her. Whether I am gratified or not in my beloved form of government, I consider that the more she is plunged into distress, the more it is my duty to relieve her. Whatever may be the result, I shall wait with patience till the day may come when an opportunity shall offer to exert myself in her cause.

But I should be led to take that man for a lunatic, who should tell me to run into the adoption of a government avowedly defective, in hopes of having it amended afterwards. Were I about to give away the meanest particle of my own property, I should act with more prudence and discretion. My anxiety and fears are great, lest America, by the adoption of this system, should be cast into a fathomless abyss.

## RICHARD HENRY LEE.

THE name of Lee occupies a prominent and honorable position in the political, religious and domestic history of the American colonies. Richard, the great-grandfather of Richard Henry Lee, removed from England to Virginia, during the reign of Charles the First, and after making several voyages to his native country, finally settled in the county of Northumberland, between the valleys of the Rappahannock and Potomac rivers. During the civil war between Charles the First and the British Parliament, this Richard Lee, and Governor Sir William Berkeley, conducted, on the part of Virginia, the negotiations consequent upon her resistance to the armed ships and troops of Cromwell, which had been sent to reduce her to an allegiance. Unable to defend the colony against this force, but refusing fidelity to the Protector, they consummated a treaty, in which Virginia was styled an "independent dominion." On the death of Cromwell, Lee, with the assistance of Sir William Berkeley, procured a declaration, proclaiming Charles the Second "King of England, France, Scotland, Ireland and Virginia," two years previous to his restoration. For this manifestation of loyalty, Charles, after he was restored to his throne, ordered the arms of Virginia to be added to those of England, France, Scotland and Ireland, with the motto "*En dat Virginia quintam.*" After the union of England and Scotland, the arms of Virginia were quartered with those of England, &c., with the motto "*En dat Virginia quartam;*" and from these circumstances Virginia derived her title of "Ancient Dominion." In gratitude for the eminent services of Mr. Lee, Richard, his second son, was appointed to an honorable and influential seat in the king's council of Virginia. This office was transmitted to Thomas, the third son of the last mentioned Richard Lee, and the father of Richard Henry, the subject of the present sketch.

Richard Henry Lee was born on the twentieth day of January, 1732, in Westmoreland county, Virginia. At this period there were very few seminaries of learning in the colonies, at which the higher branches of education were taught, therefore young Lee, after passing a few years under the care of a private tutor, was sent to England to complete his studies. At the age of nineteen, two years after the death of his father, in 1750, he returned to his native country, and for some time resided with his brother. Although at this time he passed his days in ease and pleasure, he was never idle. The extensive library his father had collected was his resort, and among the books he found abundant resources to improve his intellect. He studied with profound admiration the classic histories of Greece and Rome, and from the story of their patriotic and republican ages, he derived that extensive fund of political knowledge which he so successfully used in the service of the colonies, in after life. Thus prepared, Mr. Lee entered upon the field of public action. At the time England sent troops to protect the frontiers of the colonies from the predatory incursions of the Indians, who were employed by France to carry on the "seven years war" in America, Mr. Lee, on their arrival, marched at the head of a volunteer company to Alexandria, or Belhaven, on the Potomac, and tendered his services to the unfortunate General Braddock, who had command of the regulars. The general deeming the services of the provincials of little importance, declined to take them under his command, and Mr. Lee returned to his home. This occurred in 1755. In 1757 Mr. Lee was appointed a justice of the peace, and upon a petition from the other magistrates to the governor, he was made president

of the court. The same year he was elected to the House of Burgesses, in which position he became thoroughly versed in the laws of legislation, and the rules of parliamentary proceedings. For a long time, through want of confidence, and natural diffidence, he took very little part in debate; but the occasion arrived when he rose to a position among the first in ability and eloquence. A bill was before the House "to lay so heavy a duty on the importation of slaves, as effectually to stop the disgraceful traffic." It met with the strongest opposition. Mr. Lee spoke in favor of the imposition. "As the consequences, sir," said he, "of the determination which we must make in the subject of this day's debate, will greatly affect posterity as well as our selves, it surely merits our most serious attention. If this be bestowed, it will appear both from reason and experience, that the importation of slaves into this colony, has been and will be attended with effects dangerous to our political and moral interest. When it is observed that some of our neighboring colonies, though much later than ourselves in point of settlement, are now far before us in improvement, to what, sir, can we attribute this strange and unhappy truth? The reason seems to be this—that with their whites they import arts and agriculture, while we with our blacks, exclude both. Nature has not particularly favored them with superior fertility of soil, nor do they enjoy more of the sun's cheering influence, yet greatly have they outstripped us. \* \* \* \* In my opinion, not the cruelties practised in the conquest of Spanish America, not the savage barbarities of a Saracen, can be more big with atrocity than our cruel trade to Africa. There we encourage those poor ignorant people to wage eternal war against each other; not nation against nation, but father against son, children against parents, and brothers against brothers; whereby parental and filial affection is terribly violated; that by war, stealth or surprise, we Christians may be furnished with our fellow-creatures, who are no longer to be considered as created in the image of God, as well as ourselves, and equally entitled to liberty and freedom, by the great law of nature, but they are to be deprived, for ever deprived, of all the comforts of life, and to be made the most miserable of all the human race. I have seen it observed by a great writer, that Christianity, by introducing into Europe the truest principles of humanity, universal benevolence and brotherly love, had happily abolished civil slavery. Let us who profess the same religion, practise its precepts, and by agreeing to this duty, convince the world that we know and practise our true interests, and that we pay a proper regard to the dictates of justice and humanity." Mr. Lee's eloquence on this occasion was highly applauded, but the principles he advocated were not popular, and the bill was rejected.

The next important service rendered by Mr. Lee, was the exposure of the frauds and corruptions practised by Mr. Robinson, the treasurer of the colony of Virginia. Mr. Robinson was a man of immense wealth and social power, and was very popular with the aristocratic party, of which he was a member.\* These circumstances, together with that of his occupying the speaker's chair in the House of Burgesses, before whom Mr. Lee was to speak, required great boldness, energy and sagacity to introduce the investigation successfully. This he accomplished with the skill of a master, and proved clearly that the treasurer had been guilty of re-issuing reclaimed treasury bills, to his friends and favorites to support their extravagance; thereby degrading the colony.

When Patrick Henry proposed his resolutions in 1765, against the Stamp Act, Mr. Lee lent the full force of his splendid mind and eloquence to their support. In the debate upon this important act people knew not which most to admire; the overwhelming might of Henry or the resistless persuasion of Lee. Mr. Lee also contributed powerful articles against the "odious act," to the newspapers of the day, and he furnished an array of arguments against it to his friends in England, that were sufficient to convince every one of the ruinous policy of the measure. His letters about this period are the embodiment of energy and patriotism. In one addressed to John Dickinson, dated July 25th, 1768, in speaking of the declaratory act which accompanied the repeal of the Stamp Act, as a just cause of complaint to the colonies, he says:—

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\* At this time two parties divided the House of Burgesses. Although they could not be strictly termed "whig and tory," they were called aristocratic and republican. Mr. Lee was a firm and ardent republican, in the sense in which that word might be applied to Cato or Hampden.

"To prevent the success of this unjust system, an union of counsel and action among all the colonies, is undoubtedly necessary. The politician of Italy delivered the result of reason and experience, when he proposed the way to conquest, by division. How to effect this union, in the wisest and firmest manner, perhaps, time and much reflection only can show. But well to understand each other, and timely to be informed of what passes both here and in Great Britain, it would seem that not only select committees should be appointed by all the colonies, but that a private correspondence should be conducted between the lovers of liberty in every province."\*

Early in 1769 Mr. Lee introduced into the House of Burgesses, resolutions "denying the right of the mother country to bind the colonies in any case whatever," and firmly remonstrated against the act authorizing the crown to have "the inhabitants of the colonies transported to England to be tried for offences alleged to have been committed in the colonies." These resolutions were considered by the friends of the Crown as seditious, and the Governor dissolved the House so soon as he was informed of their adoption by that body. On the dissolution of the assembly, the members convened at a private house, where they drew up articles of convention, agreeing not to import or encourage in any way British manufactures, while the revenue acts remained in force. In the enforcement of these measures Mr. Lee was very active. In his own family he strictly adhered to the articles, and he was vigilant in watching those whom he suspected of a reluctant acquiescence. "To the domestic loom he had recourse for clothing for himself and family, and for 'wine and oil' he resorted to his own hills."

The years 1770 and 1771 passed away in comparative quiet. Mr. Lee during this time wisely persevered in the course he had marked out; continued his correspondence and widely spread the information, respecting the probable intentions of the ministry, which he was continually receiving from England, through the vigilance of his brother, Arthur Lee.† In 1772 Parliament determined to establish in the colonies, courts with admiralty jurisdiction and powers. By this proceeding trial by jury was suspended, and the property and lives of the colonists placed at the mercy of judges who were to be appointed by the Crown. Mr. Lee opposed this measure, in the House of Burgesses, and proposed to address an humble petition to his majesty, which, after reciting the grievances of the colonists, should pray, "that he would be most graciously pleased to recommend the repeal of the acts passed for the purpose of raising a revenue in America, and for subjecting American property to the determination of admiralty courts, where the constitutional trial by jury is not permitted."

On the assembling of Congress at Philadelphia, on the fourth of September, 1774, Mr. Lee took his seat in that body together with George Washington and Patrick Henry, who with him had been deputed delegates from the colony of Virginia. In this august assembly, and throughout his Congressional career, Mr. Lee distinguished himself by the boldness of his propositions,

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\* By this letter it appears Mr. Lee devised a plan of having committees of correspondence between the colonial assemblies and of private corresponding clubs, as early as 1763, and this is in support of General Gadsden of South Carolina, who, a few years previous to his death, remarked on a public occasion, that Richard Henry Lee had invited him to become a member of a private corresponding society, as early as the year 1763, which he (Mr. Lee) was endeavoring to establish between the influential men of the colonies. He stated that Mr. Lee described his object to be, to obtain a mutual pledge from the members to write for the public journals or the papers of their respective colonies, and converse with and inform the people on the subject of their rights and their wrongs, and upon all seasonable occasions to impress upon their minds the necessity of a struggle with Great Britain, for the ultimate establishment of independence.—See *Life of Richard Henry Lee*, vol. i. p. 64.

† Dr. Arthur Lee, the youngest brother of Richard Henry Lee, was born on the twentieth of December, 1740. He was educated at Edinburgh, and for some time pursued the practice of medicine at that place. On his return to America, he practised his profession for several years at Williamsburg, Virginia. In 1766 he again went to London, and studied law in the Temple, at the same time becoming an intimate friend of Sir William Jones, the learned lawyer and able historian. In England he rendered very important services to his native country, by sending to America the earliest intelligence of the plans of the ministry. In 1769 he wrote the able *Monitor's letters*, and a few years after a series of letters appeared from his pen, under the signature of "*Junius Americanus*." As the agent of Virginia in 1775, he presented the second petition of Congress to the king. In 1776 he went to Paris, as colleague with Dr. Franklin and Silas Deane, and assisted in negotiating the treaty with France. On the appointment of Dr. Franklin as sole minister to the French Court, Mr. Lee returned to America. In 1784 he was appointed a commissioner to treat with the Indians of the Six Nations, which trust he executed with much honor to himself and great satisfaction to his country. He was admitted to the bar of the Supreme Court of the United States, in February, 1790. Two years afterwards he died. His life, by R. H. Lee, was published in 1829.

and the energy with which he supported them. The address he prepared by the direction of Congress in 1775, on behalf of the twelve United Colonies, is an imperishable evidence of his patriotism and eloquence. The important motion of the seventh of June, 1776, "that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown; and that all political connection between them and the State of Great Britain, is, and ought to be, totally dissolved," was prepared and introduced by Mr. Lee, and he supported them in a brilliant and powerful speech. A few days after the introduction of this motion Mr. Lee was called home on account of the illness of his wife, which circumstance prevented his taking his seat as chairman of the committee upon his resolution according to parliamentary rules. Mr. Jefferson was appointed in his place. In August he returned to Congress, and signed the Declaration of Independence. The following June he returned to Virginia. Again in 1778, he took his seat in the Congress, and for the next two years rendered eminent services, either as the head, or a member of important committees. In the spring of the year 1780, he was re-elected a delegate to the General Assembly of Virginia. The royal troops, defeated in the north, now turned their operations to the southward. The incursions of the enemy upon the coasts of Virginia kept the inhabitants in a state of continual alarm and danger, and the small fleets, which could pass up the rivers, landed troops and pillaged the country. Westmoreland, the county in which Mr. Lee resided, from its situation, was much exposed to these distressing incursions, and he was called upon by the State to take command of the militia and repel the enemy. In this position he evinced his characteristic judgment and activity, annoying the enemy on their approaches and making excellent arrangements for a successful defence.

During the years 1780, 1781, 1782, Mr. Lee remained in the Assembly of his native State, believing that his services would be more profitable to his country in that position, rather than in the Congress of the United Colonies. At this time propositions were introduced in the assembly, to pay debts due to England; to make paper money a legal tender; and to impose a tax to support the clergy. These propositions were advocated by Mr. Lee, and opposed by Mr. Henry with great power.\* In 1784 Mr. Lee again returned to Congress, and was chosen president of that body. Under the Federal Constitution he was one of the first members of the United States Senate, in which assembly he fully sustained the exalted reputation he had early acquired. In 1792 he retired altogether from public life, and on the nineteenth of June, 1794, at his home in Chantilly, Virginia, he died in the sixty-fourth year of his age.

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#### THE COLONIES TO GREAT BRITAIN.

By a resolution of Congress passed on the third of June, 1775, a committee was appointed to prepare an address to the inhabitants of Great Britain. Richard Henry Lee, R. R. Livingston and Edmund Randolph composed that

committee, and Mr. Lee, as chairman, drafted the following address, which was adopted by Congress on the eighth of July, 1775, and forwarded to England in charge of Mr. Penn.†

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\* An interesting comparison of the merits of these great men, at this period of their lives, is given by a correspondent of the author of the life of Patrick Henry. "I met with Patrick Henry in the Assembly, in May, 1783; I also then met with Richard Henry Lee. These two gentlemen were the great leaders of the House of Delegates, and were almost constantly opposed. There were many other great men who belonged to that body, but as orators they cannot be named with Henry or Lee. Mr. Lee was a polished gentleman. He had lost the use of one of his hands, but his manner was perfectly graceful. His language was always chaste, and, although somewhat too monotonous, his speeches were always pleasing, yet he did not ravish your senses or carry away

your judgment by storm. His was the mediate class of eloquence described by Rollin in his *Belles Lettres*. He was like a beautiful river meandering through a flowery mead, but which never overflowed its banks. It was Henry who was the mountain torrent, that swept away every thing before it; it was he alone who thundered and lightened, he alone attained that sublime species of eloquence also mentioned by Rollin."

† There were two addresses from the colonies, by their delegates in Congress, to the inhabitants of Great Britain, one which was written by John Jay, in accordance with a resolve of Congress of October 11th, 1774, and the one selected; prepared in accordance with a resolve of Congress of June 3d, 1775. The circumstance of there being two, has often caused debate as to their authorship.—See *Journals of Congress*, vol. i. pp. 19, 26, 79, 106.

*The twelve United Colonies, by their delegates in Congress, to the inhabitants of Great Britain:*

FRIENDS, COUNTRYMEN AND BRETHREN!—By these, and by every other appellation that may designate the ties which bind us to each other, we entreat your serious attention to this our second attempt to prevent their dissolution. Remembrance of former friendships, pride in the glorious achievements of our common ancestors, and affection for the heirs of their virtues, have hitherto preserved our mutual connection; but when that friendship is violated by the grossest injuries; when the pride of ancestry becomes our reproach, and we are no otherwise allied than as tyrants and slaves, when reduced to the melancholy alternative of renouncing your favor or our freedom; can we hesitate about the choice? Let the spirit of Britons determine.

In a former address we asserted our rights, and stated the injuries we had then received. We hoped that the mention of our wrongs would have roused that honest indignation which has slept too long for your honor, or the welfare of the empire. But we have not been permitted to entertain this pleasing expectation. Every day brought on accumulation of injuries, and the invention of the ministry has been constantly exercised in adding to the calamities of your American brethren.

After the most valuable right of legislation was infringed; when the powers assumed by your Parliament, in which we are not represented, and from our local and other circumstances cannot be properly represented, rendered our property precarious; after being denied that mode of trial to which we have been long indebted for the safety of our persons and the preservation of our liberties; after being in many instances divested of those laws which were transmitted to us by our common ancestors, and subjected to an arbitrary code, compiled under the auspices of Roman tyrants; after those charters, which encouraged our predecessors to brave death and danger in every shape, on unknown seas, in deserts unexplored, amidst barbarous and inhospitable nations, were annulled; when, without the form of trial, without a public accusation, whole colonies were condemned, their trade destroyed, their inhabitants impoverished; when soldiers were encouraged to imbrue their hands in the blood of Americans, by offers of impunity; when new modes of trial were instituted for the ruin of the accused, where the charge carried with it the horrors of conviction; when a despotic government was established in a neighboring province, and its limits extended to every part of our frontiers; we little imagined that anything could be added to this black catalogue of unprovoked injuries: but we have unhappily been deceived, and the late measures of the British ministry fully convince us, that their object is the reduction of these colonies to slavery and ruin.

To confirm this assertion, let us recall your attention to the affairs of America, since our last address. Let us combat the calumnies of our enemies; and let us warn you of the dangers that threaten you in our destruction. Many of your fellow subjects, whose situation deprived them of other support, drew their maintenance from the sea; but the deprivation of our liberty being insufficient to satisfy the resentment of our enemies, the horrors of famine were superadded, and a British Parliament, who, in better times, were the protectors of innocence and the patrons of humanity, have, without distinction of age or sex, robbed thousands of the food, which they were accustomed to draw from that inexhaustible source, placed in their neighborhood by the benevolent Creator.

Another act of your legislature shuts our ports, and prohibits our trade with any but those States from whom the great law of self-preservation renders it absolutely necessary we should at present withhold our commerce. But this act (whatever may have been its design) we consider rather as injurious to your opulence than our interest. All our commerce terminates with you; and the wealth we procure from other nations, is soon exchanged for your superfluities. Our remittances must then cease with our trade; and our refinements with our affluence. We trust, however, that laws which deprive us of every blessing but a soil that teems with the necessaries of life, and that liberty which renders the enjoyment of them secure, will not relax our vigor in their defence. We might here observe on the cruelty and inconsistency of those, who, while they publicly brand us with reproachful and unworthy epithets, endeavor to deprive us of the means of defence by their interposition with foreign powers, and to deliver us to the lawless ravages of a merciless soldiery. But happily we are not without resources; and though the timid and humiliating applications of a British ministry should prevail with foreign nations, yet industry, prompted by necessity, will not leave us without the necessary supplies.

We could wish to go no further, and, not to wound the ear of humanity, leave untold those rigorous acts of oppression, which are daily exercised in the town of Boston, did not we hope, that by disclaiming their deeds, and punishing the perpetrators, you would shortly vindicate the honor of the British name, and re-establish the violated laws of justice.

That once populous, flourishing, and commercial town, is now garrisoned by an army, sent not to protect, but to enslave its inhabitants. The civil government is overturned, and a military despotism erected upon its ruins. Without law, without right, powers are assumed unknown to the constitution. Private property is unjustly invaded. The inhabitants, daily subjected to the licentiousness of the soldiery, are forbid to remove, in defiance of their natural rights, in violation of the most solemn compacts. Or, if after long and wearisome solici

tation, a pass is procured, their effects are detained, and even those who are most favored, have no alternative but poverty or slavery. The distress of many thousand people, wantonly deprived of the necessaries of life, is a subject, on which we would not wish to enlarge.

Yet we cannot but observe, that a British fleet (unjustified even by acts of your legislature) are daily employed in ruining our commerce, seizing our ships, and depriving whole communities of their daily bread. Nor will a regard for your honor permit us to be silent, while British troops sully your glory, by actions, which the most inveterate enmity will not palliate among civilized nations, the wanton and unnecessary destruction of Charlestown, a large, ancient and once populous town, just before deserted by its inhabitants, who had fled to avoid the fury of your soldiery.

If still you retain those sentiments of compassion by which Britons have ever been distinguished; if the humanity which tempered the valor of our common ancestors has not degenerated into cruelty, you will lament the miseries of their descendants.

To what are we to attribute this treatment? If to any secret principle of the constitution, let it be mentioned; let us learn that the government we have long revered is not without its defects, and that while it gives freedom to a part, it necessarily enslaves the remainder of the empire. If such a principle exists, why for ages has it ceased to operate? Why at this time is it called into action? Can no reason be assigned for this conduct? or must it be resolved into the wanton exercise of arbitrary power? And shall the descendants of Britons tamely submit to this? No, sirs! We never will; while we revere the memory of our gallant and virtuous ancestors, we never can surrender those glorious privileges for which they fought, bled, and conquered. Admit that your fleets could destroy our towns, and ravage our sea-coasts; these are inconsiderable objects, things of no moment to men whose bosoms glow with the ardor of liberty. We can retire beyond the reach of your navy, and, without any sensible diminution of the necessaries of life, enjoy a luxury, which from that period you will want—the luxury of being free.

We know the force of your arms, and was it called forth in the cause of justice and your country, we might dread the exertion; but will Britons fight under the banners of tyranny? Will they counteract the labors, and disgrace the victories of their ancestors? Will they forge chains for their posterity? If they descend to this unworthy task, will their swords retain their edge, their arms their accustomed vigor? Britons can never become the instruments of oppression, till they lose the spirit of freedom, by which alone they are invincible.

Our enemies charge us with sedition. In what does it consist? In our refusal to submit to unwarrantable acts of injustice and cruelty? If so, show us a period in your history in which

you have not been equally seditious. We are accused of aiming at independence; but how is this accusation supported? By the allegations of your ministers—not by our actions. Abused, insulted, and contemned, what steps have we pursued to obtain redress? We have carried our dutiful petitions to the throne. We have applied to your justice for relief. We have retrenched our luxury, and withheld our trade.

The advantages of our commerce were designed as a compensation for your protection. When you ceased to protect, for what were we to compensate?

What has been the success of our endeavors? The clemency of our sovereign is unhappily diverted; our petitions are treated with indignity; our prayers answered by insults. Our application to you remains unnoticed, and leaves us the melancholy apprehension of your wanting either the will or the power to assist us.

Even under these circumstances, what measures have we taken that betray a desire of independence? Have we called in the aid of those foreign powers who are the rivals of your grandeur? When your troops were few and defenceless, did we take advantage of their distress, and expel them our towns? or have we permitted them to fortify, to receive new aid, and to acquire additional strength?

Let not your enemies and ours persuade you that in this we were influenced by fear, or any other unworthy motive. The lives of Britons are still dear to us. They are the children of our parents, and an uninterrupted intercourse of mutual benefits had knit the bonds of friendship. When hostilities were commenced—when on a late occasion we were wantonly attacked by your troops, though we repelled their assaults and returned their blows, yet we lamented the wounds they obliged us to give; nor have we yet learned to rejoice at a victory over Englishmen.

As we wish not to color our actions, or disguise our thoughts, we shall, in the simple language of truth, avow the measures we have pursued, the motives upon which we have acted, and our future designs.

When our late petition to the throne produced no other effect than fresh injuries, and votes of your legislature, calculated to justify every severity; when your fleets and your armies were prepared to wrest from us our property, to rob us of our liberties or our lives; when the hostile attempts of General Gage evinced his designs, we levied armies for our security and defence. When the powers vested in the governor of Canada gave us reason to apprehend danger from that quarter, and we had frequent intimations that a cruel and savage enemy was to be let loose upon the defenceless inhabitants of our frontiers, we took such measures as prudence dictated, as necessity will justify. We possessed ourselves of Crown Point and Ticonderoga. Yet give us leave most solemnly to assure you, that we have not

yet lost sight of the object we have ever had in view—a reconciliation with you on constitutional principles, and a restoration of that friendly intercourse which, to the advantage of both, we till lately maintained.

The inhabitants of this country apply themselves chiefly to agriculture and commerce. As their fashions and manners are similar to yours, your markets must afford them the conveniences and luxuries for which they exchange the produce of their labors. The wealth of this extended continent centres with you; and our trade is so regulated as to be subservient only to your interest. You are too reasonable to expect, that by taxes (in addition to this), we should contribute to your expense; to believe after diverting the fountain, that the streams can flow with unabated force.

It has been said that we refuse to submit to the restrictions on our commerce. From whence is this inference drawn? Not from our words; we have repeatedly declared the contrary, and we again profess our submission to the several acts of trade and navigation passed before the year 1763, trusting, nevertheless, in the equity and justice of Parliament, that such of them as, upon cool and impartial consideration, shall appear to have imposed unnecessary or grievous restrictions, will, at some happier period, be repealed or altered. And we cheerfully consent to the operation of such acts of the British Parliament as shall be restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation, internal or external, for raising a revenue on the subjects in America without their consent.

It is alleged that we contribute nothing to the common defence. To this we answer, that the advantages which Great Britain receives from the monopoly of our trade, far exceed our proportion of the expense necessary for that purpose. But should these advantages be inadequate thereto, let the restrictions on our trade be removed, and we will cheerfully contribute such proportion when constitutionally required.

It is a fundamental principle of the British Constitution, that every man should have at least a representative share in the formation of those laws by which he is bound. Were it otherwise, the regulation of our internal police by a British Parliament, who are, and ever will be, unacquainted with our local circumstances, must be always inconvenient, and frequently oppressive, working our wrong, without yielding any possible advantage to you.

A plan of accommodation (as it has been absurdly called) has been proposed by your ministers to our respective assemblies. Were this proposal free from every other objection but that which arises from the time of the offer, it would not be unexceptionable. Can men deliberate with the bayonet at their breast? Can

they treat with freedom, while their towns are sacked; when daily instances of injustice and oppression disturb the slower operations of reason?

If this proposal is really such as you would offer, and we accept, why was it delayed till the nation was put to useless expense, and we were reduced to our present melancholy situation? If it holds forth nothing, why was it proposed? unless, indeed, to deceive you into a belief that we were unwilling to listen to any terms of accommodation. But what is submitted to our consideration? We contend for the disposal of our property. We are told that our demand is unreasonable—that our Assemblies may indeed collect our money, but that they must at the same time offer, not what your exigencies or ours may require, but so much as shall be deemed sufficient to satisfy the desires of a minister, and enable him to provide for favorites and dependants. A recurrence to your own treasury will convince you how little of the money already extorted from us, has been applied to the relief of your burthens. To suppose that we would thus grasp the shadow, and give up the substance, is adding insult to injuries.

We have nevertheless again presented an humble and dutiful petition to our sovereign; and to remove every imputation of obstinacy, have requested his majesty to direct some mode by which the united applications of his faithful colonists may be improved into a happy and permanent reconciliation. We are willing to treat on such terms as can alone render an accommodation lasting; and we flatter ourselves, that our pacific endeavors will be attended with a removal of ministerial troops, and a repeal of those laws, of the operation of which we complain, on the one part, and a disbanding of our army, and a dissolution of our commercial associations, on the other.

Yet, conclude not from this that we propose to surrender our property into the hands of your ministry, or vest your Parliament with a power which may terminate in our destruction. The great bulwarks of our constitution we have desired to maintain by every temperate, by every peaceable means; but your ministers (equal foes to British and American freedom) have added to their former oppressions an attempt to reduce us, by the sword, to a base and abject submission. On the sword, therefore, we are compelled to rely for protection. Should victory declare in your favor, yet men trained to arms from their infancy, and animated by the love of liberty, will afford neither a cheap nor easy conquest. Of this, at least, we are assured, that our struggle will be glorious, our success certain; since, even in death we shall find that freedom which in life you forbid us to enjoy.

Let us now ask, what advantages are to attend our reduction? The trade of a ruined and desolate country is always inconsiderable, its revenue trifling; the expense of subjecting and



retaining it in subjection, certain and inevitable. What then remains but the gratification of an ill-judged pride, or the hope of rendering us subservient to designs on your liberty?

Soldiers who have sheathed their swords in the bowels of their American brethren, will not draw them with more reluctance against you. When too late, you may lament the loss of that freedom which we exhort you, while still in your power, to preserve.

On the other hand, should you prove unsuccessful; should that connection which we most ardently wish to maintain, be dissolved; should your ministers exhaust your treasures, and waste the blood of your countrymen in vain attempts on our liberty, do they not deliver you, weak and defenceless, to your natural enemies?

Since, then, your liberty must be the price of your victories, your ruin of your defeat,—what blind fatality can urge you to a pursuit destructive of all that Britons hold dear?

If you have no regard to the connection which has for ages subsisted between us; if you have forgot the wounds we have received fighting by your side for the extension of the

empire; if our commerce is not an object below your consideration; if justice and humanity have lost their influence on your hearts, still motives are not wanting to excite your indignation at the measures now pursued. Your wealth, your honor, your liberty are at stake.

Notwithstanding the distress to which we are reduced, we sometimes forget our own afflictions, to anticipate and sympathize in yours. We grieve that rash and inconsiderate counsels should precipitate the destruction of an empire, which has been the envy and admiration of ages; and call God to witness! that we would part with our property, endanger our lives, and sacrifice every thing but liberty, to redeem you from ruin.

A cloud hangs over your heads and ours: ere this reaches you, it may probably burst upon us; let us, then (before the remembrance of former kindness is obliterated), once more repeat those appellations which are ever grateful in our ears; let us entreat Heaven to avert our ruin, and the destruction that threatens our friends, brethren and countrymen on the other side of the Atlantic.

## WILLIAM HENRY DRAYTON.

THE ancestors of William Henry Drayton came originally from Northamptonshire, in England. Thomas Drayton, his grandfather, emigrated from the island of Barbadoes, in company with Sir John Yeamans and others, in the year 1671, and settled in South Carolina. William Henry, the subject of the present sketch, was a son of John Drayton, of Drayton Hall, on Ashley river, at which place he was born some time in the month of September, 1742. In 1753, at the age of eleven years, he was sent by his parents to England, under the protection of Chief Justice Pinckney, who had resigned his seat on the bench of South Carolina, and was removing with his family to the mother country. Under the guidance and care of this worthy gentleman, and in companionship with his sons, Charles Cotesworth and Thomas Pinckney, young Drayton pursued his studies at Westminster school, in London, until the fall of 1761, when he entered the University of Oxford. After prosecuting his studies at this place for nearly three years, he returned to South Carolina, where he at once entered upon a course of general reading, and applied himself with great industry to the study of ancient and modern histories, the laws of nations, and the rights of his own country. In the year 1764, he was married to Miss Golightly, a young lady of fortune and rare endowments, by whom he had a son and daughter.

In 1769 the important and serious questions which agitated the provinces, attracted the attention of Mr. Drayton, and the same year, under the signature of *Freeman*, he opposed "the mode of enforcing associations, which he deemed encroachments on his private rights of freedom." By this opposition he became involved in an animated controversy with the celebrated Christopher Gadsden. Soon after this he went to England, where he was favorably received by British court and nobility; and in February, 1771, he was appointed by the king to the Privy Council of South Carolina, in which body he took his seat in April, 1772. On the decease of Judge Murray, in 1774, he was placed by Lieutenant Governor Bull in the position of assistant judge of the province, "until his majesty's pleasure should be known." The energy and independence manifested by Judge Drayton in this position, excited the ill will of the chief justice and some of the assistant judges, and the appearance, in the autumn of 1774, of his address, *To the deputies of North America, assembled in the High Court of Congress at Philadelphia*,\* exposed him in the council to an open manifestation of their displeasure, and finally to removal from the bench and council. This persecution enlisted the sympathies of his fellow-citizens, and from that time he exerted a powerful influence amongst them. He was elected to the Provincial Congress of South Carolina in 1775, and the same year ascended to the presidency of that assembly, in which office he remained while that congress existed.

On the formation of the constitution of South Carolina, in March, 1776, Judge Drayton was chosen chief justice of the colony. The courts were opened after the organization of government, under that constitution, when, on the twenty-third day of April, 1776, Chief Justice Drayton, in the presence of the associate judges, delivered his celebrated Charge to the Grand Jury;

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\* "In this address," says Dr. Ramsay, "he stated the grievances of America, and drew up a bill of American rights. This was well received. It substantially chalked out the line of conduct adopted by Congress then in session."

a production replete with learning, eloquence, and the strongest patriotism. In addition to the discharge of arduous official duties, he wrote several powerful addresses exposing the corruption of the ministry, and encouraging his fellow-citizens to assert and vindicate their natural rights. Among these is one under the signature of *A Carolinian*, in answer to the "Declaration of Lord and General Howe, published at New York, on the nineteenth of September, 1776, as commissioners for restoring peace to his Majesty's Colonies and Plantations in North America," &c. In this answer he points out the insincerity of the commissioners' proposals, and the wickedness of their intentions. "Your Excellencies," says he, "'think fit to declare,' that you are desirous 'of restoring the public tranquillity.' But is the end your Excellencies aim at our honor and advantage? Is it to give a free scope to our natural growth? Is it to confirm to us our rights by the law of nature? No! it is to cover us with infamy. It is to chill the sap, and check the luxuriance of our imperial plant. It is to deprive us of our natural equality with the rest of mankind, by '*establishing*' every State 'as a part of the British empire.' In short, your Excellencies invite men of common sense, to exchange an independent station for a servile and dangerous dependence! But, when we recollect that the King of Great Britain has, from the throne, declared his 'firm and steadfast resolutions to withstand every attempt to weaken or impair the supreme authority of that legislature over all the dominions of his crown:' that his hirelings in Parliament and tools in office, abhorred by the English nation, have echoed the sentiment; and that America, for ten years, has experienced that king's total want of candor, humanity, and justice—it is, I confess, a matter of wonder, that your Excellencies can submit to appear so lost to decency as to hold out subjection as the only condition of peace; and that you could condescend to sully your personal honor, by inviting us to trust a government in which you are conscious we cannot in the nature of things place any confidence—a government that you are sensible has been, now is, and ever must be jealous of our prosperity and natural growth—a government that you know is absolutely abandoned to corruption! Take it not amiss, if I hint to your Excellencies, that *your very appearing* in support of such a proposal, furnishes cause to doubt even of your integrity; and to reject your allurements, least they decoy us into slavery. The declaration says, 'the king is most graciously pleased to *direct a revision* of such of his royal instructions to his governors,' &c. 'and to *concur in the revisal* of all acts by which his Majesty's subjects may think themselves aggrieved.' But what of all this? Your Excellencies have not told the people, who 'think themselves aggrieved,' that they are to be a party in the revision. You have not even told them who are to be revisers. If you had, it would be nothing to the purpose; for you have not, and *cannot* tell them and *engage* that even any of the instructions and acts, being revised, shall be revoked, and repealed; *particularly those* by which the people 'may think themselves aggrieved.' But, if such are not to be repealed, why have you mentioned '*think themselves aggrieved?*' If they are intended to be repealed, why did not your Excellencies come to the point at once and say so? It is evident your Excellencies are by your superiors precipitated into a dilemma. You have not been accustomed to dirty jobs, and *plain dealing* does not accord with your instructions; otherwise, in the latter case, I think you are men of too much sense and honor to have overlooked or suppressed so material a point of information. However, you say instructions and acts are to be revised: We see that you have laid an ambuscade for our liberties; the clause is carefully constructed without the least allusion to the revisers, or to the words redress, revoke, repeal. In short, it appears to be drawn up entirely on the plan of a declaration by King James the Second after his abdication, as confidentially explained by James's Secretary of State, the Earl of Melford, to Lord Dundee in Scotland. For Melford writes to Dundee, 'that notwithstanding of what was promised in the declaration, *indemnity* and *indulgence*, yet he had couched things so that the king *would break them* when he pleased; nor would he think himself obliged *to stand to them.*' And your Excellencies have '*couched things so,*' that more words upon this subject are unnecessary."

The General Assembly of South Carolina elected Judge Drayton a delegate to the Continental Congress, early in 1778, and at the latter end of March, in that year, he repaired to York, Pennsylvania, where the Congress then held its sessions. Here he took an active part in the delibera

tions against the conciliatory bills of the British Parliament, and other important measures. On the return of the Continental Congress to Philadelphia, after the evacuation of that city by the British, Judge Drayton published another pamphlet against the royal commissioners, full of ridicule and power. This is supposed to be the last work that emanated from his pen in favor of the American colonies. From this period until his death, Mr. Drayton's congressional duties were laborious and constant. He died at Philadelphia on the third of September, 1779. Among the manuscripts left behind him, was a complete history of the American Revolution, brought down to the close of the year 1778. This was published, together with a memoir of its author, by John Drayton, LL. D., in 1821.

### THE CHARGE TO THE GRAND JURY.

At a Court of General Sessions, holden at Charleston, South Carolina, for the district of Charleston, on the twenty-third day of April, 1776, the following charge to the Grand Jury was delivered by Chief Justice William Henry Drayton:\*

GENTLEMEN OF THE GRAND JURY: When, by evil machinations tending to nothing less than absolute tyranny, trials by jury have been discontinued, and juries, in discharge of their duty, have assembled, and as soon as met, as silently and arbitrarily dismissed without being impanelled, whereby, in contempt of magna charta, justice has been delayed and denied; it cannot but afford to every good citizen, the most sincere satisfaction, once more to see juries, as they now are, legally impanelled, to the end, that the laws may be duly administered—I do most heartily congratulate you upon so important an event.

In this court, where silence has but too long presided, with a direct purpose to loosen the bands of government, that this country might be involved in anarchy and confusion, you are now met to regulate your verdicts, under a new constitution of government, independent of royal authority. A constitution which arose according to the great law of nature and of nations, and which was established in the late Congress, on the 26th of March last—a day that will be ever memorable in this country—a month, remarkable in our history for having given birth to the original constitution of our government

in the year 1669; for being the era of the American calamities by the stamp act, in the year 1765; for being the date of the repeal of that act in the following year; and for the conclusion of the famous siege of Boston, when the American arms compelled General Howe, a general of the first reputation in the British service, with the largest, best disciplined, and best provided army in that service, supported by a formidable fleet, so precipitately to abandon the most impregnable fortifications in America, as that he left behind him a great part of the bedding, military stores, and cannon of the army. And for so many important events, is the month of March remarkable in our annals. But I proceed to lay before you the principal causes leading to the late revolution of our government—the law upon the point—and the benefits resulting from that happy and necessary establishment. The importance of the transaction deserves such a state—the occasion demands, and our future welfare requires it. To do this may take up some little time; but the subject is of the highest moment, and worthy of your particular attention. I will therefore confine my discourse to that great point; and, after charging you to attend to the due observance of the jury law, and the patrol and negro acts, forbearing to mention the other common duties of a grand jury, I will expound to you THE CONSTITUTION OF YOUR COUNTRY.

The house of Brunswick was yet scarcely settled in the British throne, to which it had been called by a free people, when, in the year 1719, our ancestors in this country, finding that the government of the lords proprietors operated to their ruin, exercised the rights transmitted to them by their forefathers of England; and casting off the proprietary authority, called upon the house of Brunswick to rule over them—a house elevated to royal dominion, for no other purpose than to preserve to a people their unalienable rights. The king accepted the invitation, and thereby indisputably admitted the legality of *that* revolution. And in so doing, by his own act, he vested in those our forefathers, and us their posterity, a clear right to effect *another* revolution, if ever the govern-

\* There were two other charges to the Grand Jury of Charleston, delivered by Judge Drayton; one on the fifteenth of October, 1776, and another on the twenty-first of October, 1777. General Charles Lee took exceptions to some assertions contained in the latter, which bore severely upon his conduct at the battle of Monmouth, and sent a challenge to Judge Drayton, which he refused to accept; giving as reasons for so doing, "that although custom had sanctioned duelling with the military, it had not done so with the judiciary, and that such a conduct in a Chief Justice of South Carolina, as he was, would, in the eyes of the world, appear as a public outrage on government, society, and common decency."—*Drayton's Memoirs*.

ment of the house of Brunswick should operate to the ruin of the people. So the excellent Roman emperor, Trajan, delivered a sword to Saburanus, his captain of the Prætorian guard, with this admired sentence: "Receive *this* sword, and use it to defend me if I govern well, but *against me*, if I behave ill."

With joyful acclamations our ancestors, by act of Assembly, passed on the 18th day of August, 1721, RECOGNIZED the British monarch: The virtues of the second George are still revered among us—HE was the father of his people: And it was with ecstasy we saw his grandson, George the Third, mount the throne possessed of the hearts of his subjects.

But alas! almost with the commencement of his reign, his subjects felt causes to complain of government. The reign advanced—the grievances became more numerous and intolerable—the complaints more general and loud—the whole empire resounded with the cries of injured subjects! At length, grievances being unredressed and ever increasing; all patience being borne down; all hope destroyed; all confidence in royal government blasted!—Behold! the empire is rent from pole to pole!—perhaps to continue asunder for ever.

The catalogue of our oppressions, continental and local, is enormous. Of such oppressions, I will mention only some of the most weighty.

Under color of law, the king and parliament of Great Britain have made the most arbitrary attempts to enslave America:

By claiming a right to BIND THE COLONIES "IN ALL CASES WHATSOEVER;"

By laying duties, at their mere will and pleasure, upon all the colonies;

By suspending the legislature of New York;

By rendering the American charters of no validity, having annulled the most material parts of the charter of the Massachusetts Bay;

By divesting multitudes of the colonists of their property, without legal accusation or trial;

By depriving whole colonies of the bounty of Providence on their own proper coasts, in order to coerce them by famine;

By restricting the trade and commerce of America;

By sending to, and continuing in America, in time of peace, an armed force, without and against the consent of the people;

By granting impunity to a soldiery instigated to murder the Americans;

By declaring, that the people of Massachusetts Bay are liable for offences, or *pretended* offences, done in that colony, to be sent to, and tried for the same in ENGLAND, or in any COLONY WHERE *they cannot have the benefit of a jury of the vicinage*;

By establishing in Quebec the Roman Catholic religion, and an arbitrary government, instead of the Protestant religion and a free government.

And thus America saw it demonstrated, that no faith ought to be put in a royal proclamation;

for I must observe to you that, in the year 1763, by such a proclamation, people were invited to settle in Canada, and were assured of a legislative representation, the benefit of the common law of England, and a free government. It is a misfortune to the public, that this is not the only instance of the inefficacy of a royal proclamation. However, having given you one instance of a failure of royal faith in the northern extremity of this abused continent, let it suffice, that I direct your attention to the southern extremity; respecting which, the same particulars were in the same manner promised, but the deceived inhabitants of St. Augustine are left by their grand jury, in vain to complain and lament to the world, and yet scarcely permitted to exercise even that privilege distinguishing the miserable, that royal faith is not kept with them.

The proceedings which I have enumerated, either immediately or in their evident consequences, deeply affected all the colonies: ruin stared them in the face. They united their counsels, and laid their just complaints before the throne, praying a redress of grievances. But, to their astonishment, their dutiful petition for peace and safety was answered *only* by an actual commencement of war and military destruction!

In the mean time, the British troops that had been peaceably received by the devoted inhabitants of Boston, as *the troops of their sovereign, bound to protect them!* fortified that town, to imprison the inhabitants, and to hold that capital against the people to whom it belonged! And the British rulers having determined to, appeal from reason and justice, to violence and arms, a select body of those troops being in the night suddenly and privately marched from Boston—at Lexington, on the 19th day of April, 1775, they by surprise drew the sword of civil war, and plunged it into the breasts of the Americans! Against this horrid injustice the Almighty gave instant judgment: a handful of country militia, badly armed, suddenly collected, and unconnectedly and irregularly brought up to repel the attack, discomfited the regular bands of the tyranny; they retreated, and night saved them from total slaughter.

Thus forced to take up arms in our own defence, America *yet again* most dutifully petitioned the king, that he would be pleased "to direct some mode, by which the united applications of his faithful colonists to the throne, in presence of their common councils, might be improved into a happy and permanent reconciliation; and that in the mean time, measures might be taken for preventing the further destruction of the lives of his majesty's subjects."—But it was in vain!—The petition on the part of millions, *praying that the effusion of blood might be STAYED*, was not thought worthy of an answer! The nefarious war continued. The ruins of Charlestown, Falmouth and Norfolk, towns not constructed for offence or defence, mark the *humane* progress of the royal

arms: so the ruins of Carthage, Corinth and Numantium proclaimed to the world that justice was expelled the Roman senate! On the other hand, the fortitude with which America has endured these civil and military outrages; the union of her people, as astonishing as unprecedented, when we consider their various manners and religious tenets; their distance from each other; their various and clashing local interests; their self-denial; and their *miraculous* success in the prosecution of the war: I say, these things all demonstrate that the Lord of Hosts is on our side! So it is apparent that the Almighty Constructor of the universe, having formed this continent of materials to compose a state pre-eminent in the world, is now making use of the tyranny of the British rulers, as an instrument to fashion and arrange those materials for the end for which, in his wisdom, he had formed them.

In this enlightened age, humanity must be particularly shocked at a recital of such violences; and it is scarce to be believed, that the British tyranny could entertain an idea of proceeding against America by a train of more dishonorable machinations. But, nothing less than *absolute proof* has convinced us that, in carrying on the conspiracy against the rights of humanity, the tyranny is capable of attempting to perpetrate whatever is infamous.

For the little purpose of disarming the imprisoned inhabitants of Boston, the king's general, Gage, in the face of day, violated the public faith, *by himself plighted*; and in concert with other governors, and with John Stuart,\* he made every attempt to *instigate the savage nations to war upon the southern colonies*, indiscriminately to massacre man, woman and child. The governors in general have demonstrated, that truth is not in them; they have enveiled negroes from, and have armed them against their masters; they have armed brother against brother—son against father! Oh! Almighty Director of the universe! what confidence can be put in a government ruling by such engines, and upon such principles of *unnatural* destruction!—a government that, upon the 21st day of December last, made a law, *ex post facto*, to justify what had been done, not only without law, but in its nature unjust!—a law to make prize of all vessels trading in, to, or from the united colonies—a law to make slaves of the crews of such vessels, and to compel them to bear arms against their conscience, their fathers, their bleeding country! The world, so old as it is, heretofore had never heard of so atrocious a procedure: it has no parallel in the registers of tyranny. But to proceed—

The king's judges in this country refused to administer justice; and the late governor, Lord William Campbell, acting as the king's repre-

sentative for him, and on his behalf, having endeavored to subvert the constitution of this country, by breaking the original contract between king and people, attacking the people by force of arms; having violated the fundamental laws; having carried off the great seal, and having withdrawn himself out of this colony, he abdicated the government.

Oppressed by such a variety of enormous injuries, continental and local, civil and military, and by divers other arbitrary and illegal courses; all done and perpetrated by the assent, command, or sufferance of the king of Great Britain; the representatives of South Carolina, in Congress assembled, found themselves under an unavoidable necessity of establishing a form of government, with powers legislative, executive and judicial, for the good of the people; the origin and great end of all just government. For this only end, the house of Brunswick was called to rule over us. Oh! agonizing reflection! that house ruled us with swords, fire and bayonets! The British government operated *only* to our destruction. Nature cried aloud, self-preservation is the great law—we have but obeyed.

If I turn my thoughts to recollect in history, a change of government upon more cogent reasons, I say I know of no change upon principles so provoking—compelling—justifiable. And in these respects, even the famous revolution in England, in the year 1688, is much inferior. However, we need no better authority than that illustrious precedent, and I will therefore compare the causes of, and the law upon the two events.

On the seventh of February, 1688, the Lords and Commons of England, in convention, completed the following resolution:

*“Resolved*, That King James the second, having endeavored to subvert the constitution of the kingdom, by breaking the original contract between king and people; and, by the advice of Jesuits and other wicked persons, having violated the fundamental laws, and having withdrawn himself out of this kingdom; has abdicated the government, and that the throne is thereby vacant.”

That famous resolution deprived James of his crown; and became the foundation on which the throne of the present king of Great Britain is built—it also supports the edifice of government which we have erected.

In that resolve there are but three facts stated to have been done by James: I will point them out, and examine whether those facts will apply to the present king of Great Britain, with regard to the operations of government, by him or his representative, immediately or by consequence affecting this colony.

The first fact is, the having endeavored to subvert the constitution of the kingdom by breaking the original contract.

The violation of the fundamental laws is the second fact; and in support of these two charges, the Lords spiritual and temporal and

\* A sketch of the career of Capt. Stuart is given by Dr. Ramsay, in the account of the contests with the Indians, which is embodied in his valuable History of South Carolina. Vol. i. p. 148.

Commons, assembled at Westminster, on the twelfth day of February, 1688, declared that James was guilty.

"By assuming, and exercising a power of dispensing with, and suspending of laws, and the execution of laws, without consent of Parliament:

"By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power:

"By issuing and causing to be executed a commission, under the great seal, for erecting a court, called the court of commissioners for ecclesiastical causes:

"By levying money for, and to the use of the Crown, by pretence of prerogative, for other time, and in other manner, than the same was granted by Parliament:

"By raising and keeping a standing army within this kingdom in time of peace, without consent of Parliament; and quartering soldiers contrary to law:

"By causing several good subjects, being Protestants, to be disarmed, at the same time when Papists were both armed and employed contrary to law:

"By violating the freedom of election of members to serve in Parliament:

"By prosecutions in the Court of King's Bench, for matters and causes cognizable only in Parliament; and by divers other arbitrary and illegal courses."

This declaration, thus containing two points of criminality—breach of the original contract, and violation of fundamental laws—I am to distinguish one from the other.

In the first place then, it is laid down in the best law authorities, that protection and subjection are reciprocal, and that these reciprocal duties form the original contract between king and people. It therefore follows, that the original contract was broken by James's conduct as above stated, which amounted to a not affording due protection to his people. And, it is as clear, that he violated the fundamental laws, by the suspending of laws, and the execution of laws; by levying money; by violating the freedom of election of members to serve in Parliament; by keeping a standing army in time of peace; and by quartering soldiers contrary to law, and without consent of Parliament; which is as much as to say, that he did those things without consent of the *legislative Assembly* chosen by the PERSONAL ELECTION of that people, over whom such doings were exercised.

These points, reasonings, and conclusions, being settled in, deduced from, and established upon parliamentary proceedings, and the best law authorities, must ever remain unshaken. I am now to undertake the disagreeable task of examining, whether they will apply to the violences which have lighted up, and now feed the flames of civil war in America.

James the Second suspended the operations of laws—George the Third caused the charter

of the Massachusetts Bay to be in effect annihilated; he suspended the operation of the law which formed a legislature in New York, vesting it with adequate powers; and thereby he caused the very ability of making laws in that colony to be suspended.

King James levied money without the consent of the representatives of the people called upon to pay it—king George has levied money upon America, not only without, but expressly *against* the consent of the representatives of the people in America.

King James violated the freedom of election of members to serve in Parliament—King George, by his representative, Lord William Campbell, acting for him and on his behalf, broke through a fundamental law of this country, for the certain holding of General Assemblies; and thereby, as far as in him lay, not only violated but annihilated the very ability of holding a General Assembly.

King James in time of peace kept a standing army in England, without consent of the representatives of the people among whom that army was kept—king George hath in time of peace invaded this continent with a large standing army without the consent, and he hath kept it within this continent, expressly against the consent of the representatives of the people among whom that army is posted.

All which doings by king George the Third respecting America are as much contrary to our interests and welfare; as much against law, and tend as much, at least, to subvert and extirpate the liberties of this colony, and of America, as the similar proceedings, by James the Second, operated respecting the people of England. For the same principle of law, touching the premises, equally applies to the people of England in the one case, and to the people of America in the other. And this is the great principle. Certain acts done, over, and affecting a people, against and *without* THEIR CONSENT *expressed by THEMSELVES, or by REPRESENTATIVES of their own ELECTION.* Upon this *only* principle was grounded the complaints of the people of England—upon the *same* is grounded the complaints of the people of America. And hence it clearly follows, that if James the Second violated the fundamental laws of England, George the Third hath also violated the fundamental laws of America.

Again—

King James broke the original contract by not affording due protection to his subjects, although he was not charged with having seized their towns and with having held them against the people—or with having laid them in ruins by his arms—or with having seized their vessels—or with having pursued the people with fire and sword—or with having declared them rebels, for resisting his arms levelled to destroy their lives, liberties and properties—but George the Third hath done all those things against America; and it is therefore undeniable, that he hath not afforded due protection to the peo-

ple. Wherefore, if James the Second broke the original contract, it is undeniable that George the Third has also broken the original contract between king and people; and that he made use of the most violent measures by which it could be done—violences, of which JAMES WAS GUILTY. Measures, carrying conflagration, massacre and open war amidst a people, whose subjection to the king of Great Britain, the law holds to be due *only* as a return for protection. And so tenacious and clear is the law upon this very principle, that it is laid down, subjection is not due even to a king *de jure*, or of right, unless he be also king *de facto*, or in possession of the executive powers dispensing protection.

Again—

The third fact charged against James is, that he withdrew himself out of the kingdom; and we know that the people of this country have declared, that Lord William Campbell, the king of Great Britain's representative, "having used his utmost efforts to destroy the lives, liberties, and properties of the good people here, whom by the duty of his station he was bound to protect, withdrew himself out of the colony:" hence it will appear, that George the Third hath withdrawn himself out of this colony, provided it be established, that exactly the same natural consequence resulted from the withdrawing in each case respectively: king James personally out of England and king George out of Carolina, by the agency of his substitute and representative, Lord William Campbell. By king James's withdrawing, the executive magistrate was gone, thereby, in the eye of the law, the executive magistrate was dead, and of consequence royal government actually ceased in England: so by king George's representative's withdrawing, the executive magistrate was gone, the death, in law, became apparent, and of consequence royal government actually ceased in this colony. Lord William withdrew as the king's representative, carrying off the great seal and royal instructions to governors, and acting for and on the part of his principal, by every construction of law, that conduct became the conduct of his principal; and thus, James the Second withdrew out of England and George the Third withdrew out of South Carolina; and by such a conduct, respectively, the people in each country were exactly in the same degree injured.

The three facts against king James being thus stated and compared with similar proceedings by king George, we are now to ascertain the result of the injuries done by the first, and the law upon that point; which, being ascertained, must naturally constitute the judgment in law, upon the result of the similar injuries done by the last: and I am happy that I can give you the best authority upon this important point.

Treating upon this great precedent in constitutional law, the learned judge Blackstone declares, that the result of the facts "amounted

to an abdication of the government, which abdication did not affect only the person of the king himself, but also, *all his heirs*; and rendered the throne absolutely and completely vacant." Thus it clearly appears, that the government was not abdicated, and the throne vacated by the resolution of the lords and commons; but, that the resolution was only declaratory of the law of nature and reason, upon the result of the injuries proceeding from the three combined facts of mal-administration. And thus, as I have on the foot of the best authorities made it evident, that George the Third, king of Great Britain, has endeavored to subvert the constitution of this country, by breaking the original contract between king and people; by the advice of wicked persons, has violated the fundamental laws, and has withdrawn himself, by withdrawing the constitutional benefits of the kingly office, and his protection out of this country: from such a result of injuries, from such a conjuncture of circumstances—the law of the land authorizes me to declare, and it is my duty boldly to declare the law, that George the Third, king of Great Britain, has abdicated the government, and that the throne is thereby vacant; that is, HE HAS NO AUTHORITY OVER US, and WE OWE NO OBEDIENCE TO HIM.—The British ministers already have presented a charge of mine to the notice of the lords and commons in Parliament; and I am nothing loth, that they take equal resentment against this charge. For, supported by the fundamental laws of the constitution, and engaged as I am in the cause of virtue, I fear no consequences from their machinations.

Thus, having stated the principal causes of our *last* revolution, it is as clear as the sun in meridian, that George the Third has injured the Americans, at least as grievously as James the Second injured the people of England; but that James did not oppress these in so *criminal* a manner as George has oppressed the Americans. Having also stated the law on the case, I am naturally led to point out to you some of the great benefits resulting from that revolution.

In one word, then, you have a form of government in every respect preferable to the mode under the British authority: and this will most clearly appear by contrasting the two forms of government.

Under the British authority, governors were sent over to us, who were utterly unacquainted with our local interests, the genius of the people, and our laws; generally, they were but too much disposed to obey the mandates of an arbitrary ministry; and if the governor behaved ill, we could not by any peaceable means procure redress. But, under our present happy constitution, our executive magistrate arises according to the spirit and letter of holy writ—"their governors shall proceed from the midst of them." Thus, the people have an opportunity of choosing a man intimately acquainted with their true interests, their genius, and their



laws; a man perfectly disposed to defend them against arbitrary ministers, and to promote the happiness of that people from among whom he was elevated, and by whom, without the least difficulty, he may be removed and blended in the common mass.

Again, under the British authority it was in effect declared, that we had no property; nay, that we could not possess any; and that we had not any of the rights of humanity. For men who knew us not, men who gained in proportion as we lost, arrogated to themselves a right to BIND US IN ALL CASES WHATSOEVER! But, our constitution is calculated to FREE us from foreign bondage; to secure to us our property; to maintain to us the rights of humanity, and to defend us and our posterity against British authority, aiming to reduce us to the most abject slavery!

Again, the British authority declared, that we should not erect slitting mills; and to this unjust law we implicitly and respectfully submitted, so long as, with safety to our lives, we could yield obedience to such authority; but a resolution of Congress now grants a premium to encourage the construction of such mills. The British authority discouraged our attempting to manufacture for our own consumption; but the new constitution, by authorizing the disbursement of large sums of money by way of loan or premium, encourages the making of iron, bar-steel, nail-rods, gun-locks, gun-barrels, sulphur, nitre, gunpowder, lead, woollens, cottons, linens, paper and salt.

Upon the whole, it has been the policy of the British authority to oblige us to supply our wants at their market, which is the *dearest* in the known world, and to cramp and confine our trade so as to be subservient to their commerce, our real interest being ever out of the question. On the other hand, the new constitution is wisely adapted to enable us to trade with foreign nations, and thereby to supply our wants at the *cheapest* markets in the universe; to extend our trade infinitely beyond what it has ever been known; to encourage manufactures among us; and it is peculiarly formed to promote the happiness of the people, from among whom, by virtue and merit, THE POOREST MAN may arrive at the HIGHEST DIGNITY.—Oh Carolinians! happy would you be under this new constitution, if you knew your happy state.

Possessed of a constitution of government founded upon so generous, equal and natural a principle—a government expressly calculated to make the people rich, powerful, virtuous and happy, who can wish to change it, to return under a royal government, the vital principles of which are the reverse in every particular! It was my duty to lay this happy constitution before you, in its genuine light: it is your duty to understand, to instruct others, and to defend it.

I might here with propriety quit this truly important subject, but my anxiety for the public

weal compels me yet to detain your attention, while I make an observation or two upon one particular part of the constitution.

When all the various attempts to enslave America by fraud, under guise of law; by military threats; by famine, massacre, breach of public faith, and open war: I say, when these things are considered on the one hand, and on the other, the constitution, expressing that some mode of government should be established, "until an accommodation of the unhappy differences between Great Britain and America can be obtained; an event which, though traduced and treated as rebels, we still ardently desire." I say, when these two points are contrasted, can we avoid revering the unanimity of that great council of the state, who after such injuries could entertain such a principle! But the virtuous are ever generous. We do not wish revenge: we earnestly wish an accommodation of our unhappy disputes with Great Britain; for we prefer peace to war. Nay, there may be even such an accommodation as, excluding every idea of revenue by taxation or duty, or of legislation by act of parliaments, may vest the king of Great Britain with such a limited dominion over us as may tend, *bona fide*, to promote our true commercial interests, and to secure our freedom and safety—the only just ends of any dominion. But, while I declare thus much on the one side, on the other it is my duty also to declare that, in my opinion, our true commercial interests cannot be provided for but by such a material alteration of the British acts of navigation as, according to the resolve of the honorable the Continental Congress, will "secure the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members." And that our liberties and safety cannot be depended upon, if the king of Great Britain should be allowed to hold our forts and cannon, or to have authority over a single regiment in America, or a single ship of war in our ports. For if he holds our forts, *he may turn them against us*, as he did Boston against her proprietors; if he acquires our cannon, *he will effectually disarm the colony*; if he has a command of troops among us, even if we raise and pay them, *shackles are fixed upon us*—witness Ireland and her national army. The most express act of Parliament cannot give us security, for acts of Parliament are as *easily* repealed as made. Royal proclamations are not to be depended upon, witness the *disappointments of the inhabitants of Quebec and St. Augustine*. Even a change of ministry will not avail us, because, notwithstanding the rapid succession of ministers for which the British court has been famous during the present reign, *yet the same ruinous policy ever continued to prevail against America*. In short, I think it my duty to declare, in the awful seat of justice and before Almighty God, that in my opinion the Americans can have no safety but by the Divine favor, their own virtue, and their

being so prudent as NOT TO LEAVE IT IN THE POWER OF THE BRITISH RULERS TO INJURE THEM. Indeed, the ruinous and deadly injuries received on our side, and the jealousies entertained, and which, in the nature of things, must daily increase against us, on the other, demonstrate to a mind in the least given to reflection upon the rise and fall of empires, that true reconciliation never can exist between Great Britain and America, the latter being in subjection to the former. The Almighty created America to be independent of Britain. Let us beware of the impiety of being backward to act as instruments in the almighty hand, now extended to accomplish his purpose, and by the completion of which alone, America, in the nature of human

affairs, can be secure against the craft and insidious designs of HER ENEMIES, WHO THINK HER PROSPERITY AND POWER ALREADY BY FAR TOO GREAT. In a word, our piety and political safety are so blended, that to refuse our labors in this Divine work, is to refuse to be a great, a free, a pious, and a happy people!

And now, having left the important alternative, political happiness or wretchedness, under God, in a great degree in your own hands, I pray the Supreme Arbiter of the affairs of men so to direct your judgment, as that you may act agreeable to what seems to be his will, revealed in his miraculous works in behalf of America, bleeding at the altar of liberty!

## JOSEPH WARREN, M.D.

DOCTOR JOSEPH WARREN was born in Roxbury, Massachusetts, on the eleventh day of June, 1741. His family, for as many generations as any thing is known respecting it, had been settled at or in the vicinity of his birthplace. His father was a respectable farmer, who had held several municipal offices in the town where he resided, and was esteemed a man of "good understanding, industrious, upright, honest, and faithful,—a serious, exemplary Christian, and a useful member of society." Joseph, after finishing the usual preparatory studies at the grammar-school of his native town, entered Harvard College in 1755, where he sustained the character of a youth of fine understanding, independent deportment, and generous principles. The particular incidents relating to this period of his life are lost to history, but one anecdote, illustrating the fearlessness and energy of his character, being left. Several students of Warren's class shut themselves in a room to arrange some college affairs, in a way which they knew was contrary to his wishes, and barred the door so effectually that he could not without great violence force it; but he did not give over the attempt to gain admission, for, perceiving that the window of the room in which they were assembled was open, and near a spout which extended from the roof of the building to the ground, he went to the top of the house, slid down to the eaves, seized the spout, and when he had descended as far as the window, threw himself into the chamber among them. At that instant the spout, which was decayed and weak, gave way and fell to the ground. He looked at it without emotion, said that it had served his purpose, and began to take his part in the college business. After graduating, in 1759, Warren commenced the study of medicine under the guidance of Dr. James Lloyd, a distinguished practitioner in Boston, and soon after entered into practice. In 1764, when the small-pox visited Boston, he was very successful in his treatment of that disease, which at that time was considered the most terrible scourge of the human race. This success won him many friends, the good will of whom he never lost, and his practice soon became extensive. The same year he married a daughter of Dr. Richard Hooton.

At the commencement of the disturbances in the colonies, consequent upon the passage of the Stamp Act, Dr. Warren entered the arena of politics, where he remained, enlightening the people with his pen, and with his oratorical reasoning directing public sentiment. Among the numerous expressions of his opinions at this period is the following, taken from a private letter addressed to a clerical friend in England. "Never has there been a time, since the first settlement of America, in which the people had so much reason to be alarmed, as the present. The whole continent is inflamed to the highest degree. I believe this country may be esteemed as truly loyal in their principles as any in the universe; but the strange project of levying a stamp duty, and of depriving the people of the privileges of trials by juries, has roused their jealousy and resentment. They can conceive of no liberty where they have lost the power of taxing themselves, and where all controversies between the Crown and the people are to be determined by the opinion of one dependant; and they think that slavery is not only the greatest misfortune, but that it is also the greatest crime (if there is a possibility of escaping it). You are sensible that the inhabitants of this country have ever been zealous lovers of their civil and

religious liberties. For the enjoyment of these they have fought battles, left a pleasant and populous country, and exposed themselves to all the dangers and hardships in this new world: and their laudable attachment to freedom, has hitherto been transmitted to posterity. \* \* \* Freedom and equality is the state of nature; but slavery is the most unnatural and violent state that can be conceived of, and its approach must be gradual and imperceptible. In many old countries, where in a long course of years some particular families have been able to acquire a very large share of property, from which must arise a kind of aristocracy,—that is, the power and authority of some persons or families is exercised in proportion to the decrease of the independence and property of the people in general;—had America been prepared in this manner for the Stamp Act, it might perhaps have met with a more favorable reception; but it is absurd to attempt to impose so cruel a yoke on a people who are so near to a state of original equality, and who look upon their liberties not merely as arbitrary grants, but as their unalienable, eternal rights, purchased by the blood and treasure of their ancestors,—which liberties, though granted and received as acts of favor, could not, without manifest injustice, have been refused, and cannot now, or at any time hereafter, be revoked.”\* Dr. Warren contributed several spirited articles to the Boston Gazette, under the signature of *A True Patriot*. In his letter to Governor Bernard, published in that journal, in February, 1768, he displays his characteristic decision and energy. After expressing his knowledge of the governor’s enmity to the province, and the calumination heaped upon its inhabitants by that official, he concludes: “But I refrain, lest a full representation of the hardships suffered by this too long insulted people should lead them to an unwarrantable revenge. We never can treat good and patriotic rulers with too great reverence. But it is certain that men totally abandoned to wickedness can never merit our regard, be their stations ever so high.

‘If such men are by God appointed,  
The devil may be the Lord’s anointed.’”

This article so excited the governor that he despatched a message to the House, and another to the Council, calling their attention to it. The Council pronounced it a scandalous libel; but the House was of opinion that as no particular individual, public or private, was named, it could not affect the majesty of the king, or the true interests of the colony. It was also laid before the Grand Jury; but that body made no presentment. Thus it remained; its author receiving no other rebuke than the *opinions* of the “royal followers,” who called it “a most abusive piece against the governor.” Undaunted by the decision of the Council and the friends of the governor, Dr. Warren continued his publications, maintaining the rights of the people. “Every society of men,” said he, “have a clear right to refute any unjust aspersions upon their characters, especially when they feel the evil effects of such aspersions; and, though they may not pursue the slanderer from motives of revenge, yet are obliged to detect him, that so he may be prevented from injuring them again. This province has been most barbarously traduced, and now groans under the weight of those misfortunes which have been thereby brought upon it. We have detected some of the authors: we will zealously endeavor to deprive them of the power of injuring us hereafter. We will strip the serpents of their stings, and consign to disgrace all those guileful betrayers of their country. There is but one way for men to avoid being set up as objects of general hate, which is—*not to deserve it.*”

Dr. Warren pronounced two orations in commemoration of the massacre perpetrated in King street, Boston, on the evening of the fifth of March, 1770. The first was delivered at the Old South Church, in 1772. For this effort he gained little applause, yet the fervor he displayed exerted powerful effect upon the minds of the people.† On the occasion of the second oration, in 1775, Warren displayed a loftier spirit and a greater energy. It had been openly avowed by some of the British soldiery then in Boston, that whoever should attempt an oration upon that occasion should answer for it with his life. Undaunted at this threat, and wishing for the

\* A copy of this letter, which is curiously illustrative of the state of public feeling in New England upon the subject of the Stamp Act, is published in Loring’s “Boston Orators,” with an account of its origin, recovery, &c

† Hutchinson’s History of Massachusetts Bay, Vol. Third, page 348.

honor of braving it, Warren solicited the appointment of orator. On the day appointed for the performance, the Old South Church was filled to excess. The pulpit and the avenues leading to it, were crowded with the officers and soldiers of the royal service. To prevent confusion, Warren entered from the rear of the church through the pulpit window, and, unaffected by the hostile array before him and around him, he delivered the oration, with a firm and determined purpose. "The scene was sublime," says an eloquent modern writer. "A patriot, in whom the flush of youth and the grace and dignity of manhood were combined, stood armed in the sanctuary of God, to animate and encourage the sons of liberty, and to hurl defiance at their oppressors. The orator commenced with the early history of the country, described the tenure by which we held our liberties and property, the affection we had constantly shown the parent country, boldly told them how, and by whom these blessings of life had been violated. There was in this appeal to Britain—in this description of suffering, agony, and horror, a calm and high-souled defiance, which must have chilled the blood of every sensible foe. Such another hour has seldom happened in the history of man, and it is not surpassed in the records of nations."

A few weeks after the delivery of this splendid production, Warren entered the field for the maintenance of the principles he had avowed. On the return of the British troops from Concord and Lexington, in April, 1775, he was in attendance upon the Committee of Safety at West Cambridge, and when they approached, he went out in company with General Heath to repel them. A sharp engagement ensued, during which a musket ball passed so near the temple of Warren as to cut off one of the "long, close, horizontal curls" which, according to the fashion of the times, he wore above his ears. The people were animated with his cool and determined bravery, and their confidence in his gallantry and talents was unbounded. At this time Warren was the President of the Provincial Congress, in which position he discovered extraordinary powers of mind, and great fitness for the emergencies of the times. On the fourteenth of June, he was chosen a major-general of the Massachusetts forces. Two days afterwards, in a conversation with Elbridge Gerry, respecting the determination of Congress to take possession of Bunker's Hill, he said, that for himself he was opposed to the measure, but as the majority had decided upon it, he would hazard his life to carry it into effect. Mr. Gerry remonstrated with him, and concluded by saying, "As surely as you go there you will be slain." Warren replied with enthusiasm, "*Dulce et decorum est pro patria mori.*"—It is pleasant and honorable to die for one's country. These principles were sealed with his blood. On the morning preceding the battle he was at Cambridge, and hearing of the preparations going on at Charlestown, he mounted a horse and rode to the place. He did not arrive at the battle-ground until the enemy had commenced their movements for the attack. As soon as he made his appearance on the field, the veteran commander of the day, Col. Prescott, proffered him the command, but he declined taking any other part than that of a volunteer, and added that he came to learn the art of war from an experienced soldier, whose orders he should be happy to obey. Borrowing a musket from a soldier who was retiring, he mingled in the thickest of the fight, where his example encouraged the troops to deeds of honor and bravery. When the battle was decided in favor of the British, and the retreat of the Americans commenced, a ball struck Warren on the head, and he died in the trenches.\* His death caused the deepest sorrow in the community, and the sacrifice of so noble a victim produced a stronger determination on the part of the colonists to preserve their rights and liberties.

## THE BOSTON MASSACRE.

This oration was delivered at Boston, Massachusetts, on the sixth day of March, 1775, in commemoration of the "Bloody Massacre" committed in King street, Boston, on the evening of the fifth of March, 1770: \*

MY EVER HONORED FELLOW-CITIZENS: It is not without the most humiliating conviction of my want of ability, that I now appear before you: but the sense I have of the obligation I am under to obey the calls of my country at all times, together with an animating recollection of your indulgence, exhibited upon so many occasions, has induced me, once more, undeserving as I am, to throw myself upon that candor

\* In the month of September, 1768, two regiments of British troops, under the command of Colonels Dalrymple and Carr, arrived at Boston. The people of that town desired that they should be stationed at the Castle, now Fort Independence; but "they landed with all the appearance of hostility! They marched through the town with all the ensigns of triumph, evidently designed to subject the inhabitants to the severe discipline of a garrison, and continued their enormities by abusing the people." On the second day of March, 1770, a quarrel arose between two soldiers of the 29th regiment, and the workmen at a ropewalk not far distant from the barracks. The soldiers being repulsed, soon made another attack, having increased their number to ten or twelve; but these were also successfully resisted. In consequence of these quarrels the soldiery declared they would be avenged. The following account of their proceedings is taken from the Boston Chronicle, of March 8th, 1770: "Last Monday, about 9 o'clock at night, a most unfortunate affair happened in King street. The sentinel posted at the Custom House, being surrounded by a number of people, called to the main-guard, upon which Captain Preston, with a party, went to his assistance, soon after which some of the party fired, by which the following persons were killed: Samuel Gray, ropemaker, a mulatto man, named Attucks, and Mr. James Caldwell. Early the next morning Captain Preston was committed to jail, and the same day eight soldiers. A meeting of the inhabitants was called at Faneuil Hall that forenoon, and the lieutenant-governor and council met at the council chamber, where the Colonels, Dalrymple and Carr, were desired to attend, when it was concluded upon, that both regiments should go down to the barracks, at Castle William, as soon as they were ready to receive them."

The funeral of the victims of the massacre was attended the 8th of March. On this occasion the shops of the town were closed, and all the bells were ordered to be tolled, as were those of the neighboring towns. The procession began to move between 4 and 5 o'clock, P. M., the bodies of the two strangers, *Caldwell* and *Attucks*, being borne from Faneuil Hall, and those of the other victims, from the residence of their families,—the hearses meeting in King street, near the scene of the tragedy, and passing through the main street to the burial-ground, where the bodies were all deposited in one vault. Patrick Carr, who was wounded in the affair, died on the 14th, and was buried on the 17th, in the same vault with his murdered associates. The anniversary of this massacre was celebrated until 1783, when the practice was discontinued.

which looks upon kindness on the feeblest efforts of an honest mind.

You will not now expect the elegance, the learning, the fire, the enrapturing strains of eloquence, which charmed you when a Lovell, a Church, or a Hancock\* spake; but you will permit me to say, that with a sincerity equal to theirs, I mourn over my bleeding country. With them I weep at her distress, and with them deeply resent the many injuries she has received from the hands of cruel and unreasonable men.

That personal freedom is the natural right of every man, and that property, or an exclusive right to dispose of what he has honestly acquired by his own labor, necessarily arises therefrom, are truths which common sense has placed beyond the reach of contradiction. And no man or body of men can, without being guilty of flagrant injustice, claim a right to dispose of the persons or acquisitions of any other man, or body of men, unless it can be proved that such a right has arisen from some compact between the parties, in which it has been explicitly and freely granted.

If I may be indulged in taking a retrospective view of the first settlement of our country, it will be easy to determine with what degree of justice the late Parliament of Great Britain have assumed the power of giving away that property, which the Americans have earned by their labor.

Our fathers, having nobly resolved never to wear the yoke of despotism, and seeing the European world, at that time, through indolence and cowardice, falling a prey to tyranny, bravely threw themselves upon the bosom of the ocean, determined to find a place in which they might enjoy their freedom, or perish in the glorious attempt. Approving heaven beheld the favorite ark dancing upon the waves, and graciously preserved it until the chosen families were brought in safety to these western regions. They found the land swarming with savages, who threatened death with every kind of torture. But savages, and death with torture, were far less terrible than slavery. Nothing was so much the object of their abhorrence as a tyrant's power. They knew it was more safe to dwell with man, in his most unpolished state, than in a country where arbitrary power prevails. Even anarchy itself, that bugbear held up by the tools of power, (though truly to be deprecated,) is infinitely less dangerous to mankind than arbitrary government. Anarchy can be but of a short duration; for, when men are at liberty to pursue that course which is more conducive to their own happiness, they will soon come into it; and from the rudest state of nature, order and good govern-

\* These were orators of preceding years.

ment must soon arise. But tyranny, when once established, entails its curses on a nation to the latest period of time; unless some daring genius, inspired by heaven, shall, unappalled by danger, bravely form and execute the arduous designs of restoring liberty and life to his enslaved, murdered country.

The tools of power, in every age, have racked their inventions to justify the few in sporting with the happiness of the many; and, having found their sophistry too weak to hold mankind in bondage, have impiously dared to force religion, the daughter of the King of Heaven, to become a prostitute in the service of hell. They taught, that princes, honored with the name of Christian, might bid defiance to the founder of their faith, might pillage pagan countries and deluge them with blood, only because they boasted themselves to be the disciples of that teacher, who strictly charged his followers to do to others as they would that others should do unto them.

This country having been discovered by an English subject, in the year 1620, was (according to the system which the blind superstition of those times supported) deemed the property of the Crown of England. Our ancestors, when they resolved to quit their native soil, obtained from King James a grant of certain lands in North America. This they probably did to silence the cavils of their enemies, for it cannot be doubted, but they despised the pretended right which he claimed thereto. Certain it is, that he might, with equal propriety and justice, have made them a grant of the planet Jupiter. And their subsequent conduct plainly shows, that they were too well acquainted with humanity, and the principles of natural equity, to suppose, that the grant gave them any right to take possession; they, therefore, entered into a treaty with the natives, and bought from them the lands. Nor have I ever yet obtained any information, that our ancestors ever pleaded, or that the natives ever regarded the grant from the English Crown: the business was transacted by the parties in the same independent manner, that it would have been, had neither of them ever known or heard of the island of Great Britain.

Having become the honest proprietors of the soil, they immediately applied themselves to the cultivation of it; and they soon beheld the virgin earth teeming with richest fruits, a grateful recompense for their unwearied toil. The fields began to wave with ripening harvests, and the late barren wilderness was seen to blossom like the rose. The savage natives saw, with wonder, the delightful change, and quickly formed a scheme to obtain that by fraud or force, which nature meant as the reward of industry alone. But the illustrious emigrants soon convinced the rude invaders, that they were not less ready to take the field for battle than for labor; and the insidious foe was driven from their borders as often as he ventured to disturb them. The Crown of England looked

with indifference on the contest; our ancestors were left alone to combat with the natives. Nor is there any reason to believe, that it ever was intended by the one party, or expected by the other, that the grantor should defend and maintain the grantees in the peaceable possession of the lands named in the patents. And it appears plainly, from the history of those times, that neither the prince nor the people of England, thought themselves much interested in the matter. They had not then any idea of a thousandth part of those advantages, which they since have, and we are most heartily willing they should still continue to reap from us.

But when, at an infinite expense of toil and blood, this widely extended continent had been cultivated and defended; when the hardy adventurers justly expected, that they and their descendants should peaceably have enjoyed the harvest of those fields which they had sown, and the fruit of those vineyards which they had planted, this country was then thought worthy the attention of the British ministry; and the only justifiable and only successful means of rendering the colonies serviceable to Britain, were adopted. By an intercourse of friendly offices, the two countries became so united in affection, that they thought not of any distinct or separate interests, they found both countries flourishing and happy. Britain saw her commerce extended, and her wealth increased; her lands raised to an immense value; her fleets riding triumphant on the ocean; the terror of her arms spreading to every quarter of the globe. The colonist found himself free, and thought himself secure: he dwelt under his own vine, and under his own fig-tree, and had none to make him afraid. He knew, indeed, that by purchasing the manufactures of Great Britain, he contributed to its greatness: he knew that all the wealth that his labor produced, centred in Great Britain. But that, far from exciting his envy, filled him with the highest pleasure; that thought supported him in all his toils. When the business of the day was past, he solaced himself with the contemplation, or perhaps entertained his listening family with the recital of some great, some glorious transaction, which shines conspicuous in the history of Britain; or, perhaps, his elevated fancy led him to foretell, with a kind of enthusiastic confidence, the glory, power and duration of an empire which should extend from one end of the earth to the other. He saw, or thought he saw, the British nation risen to a pitch of grandeur, which cast a veil over the Roman glory, and, ravished with the preview, boasted a race of British kings, whose names should echo through those realms where Cyrus, Alexander, and the Cæsars were unknown; princes, for whom millions of grateful subjects redeemed from slavery and pagan ignorance, should, with thankful tongues, offer up their prayers and praises to that transcendently great and beneficent being, "by whom kings reign and princes decree justice."

These pleasing connections might have continued; these delightful prospects might have been every day extended; and even the reveries of the most warm imagination might have been realized; but, unhappily for us, unhappily for Britain, the madness of an avaricious minister of state, has drawn a sable curtain over the charming scene, and in its stead has brought upon the stage, discord, envy, hatred and revenge, with civil war close in their rear.

Some demon, in an evil hour, suggested to a short-sighted financier the hateful project of transferring the whole property of the king's subjects in America, to his subjects in Britain. The claim of the British Parliament to tax the colonies, can never be supported but by such a transfer; for the right of the House of Commons of Great Britain to originate any tax or grant money, is altogether derived from their being elected by the people of Great Britain to act for them; and the people of Great Britain cannot confer on their representatives a right to give or grant any thing which they themselves have not a right to give or grant personally. Therefore, it follows, that if the members chosen by the people of Great Britain to represent them in Parliament, have, by virtue of their being so chosen, any right to give or grant American property, or to lay any tax upon the lands or persons of the colonists, it is because the lands and people in the colonies are, *bona fide*, owned by and justly belonging to the people of Great Britain. But (as has been before observed), every man has a right to personal freedom; consequently a right to enjoy what is acquired by his own labor. And it is evident that the property in this country has been acquired by our own labor; it is the duty of the people of Great Britain to produce some compact in which we have explicitly given up to them a right to dispose of our persons or property. Until this is done, every attempt of theirs, or of those whom they have deputed to act for them, to give or grant any part of our property, is directly repugnant to every principle of reason and natural justice. But I may boldly say that such a compact never existed, no, not even in imagination. Nevertheless, the representatives of a nation long famed for justice and the exercise of every noble virtue, have been prevailed on to adopt the fatal scheme; and although the dreadful consequences of this wicked policy have already shaken the empire to its centre, yet still it is persisted in. Regardless of the voice of reason; deaf to the prayers and supplications; and unaffected with the flowing tears of suffering millions, the British ministry still hug the darling idol; and every rolling year affords fresh instances of the absurd devotion with which they worship it. Alas! how has the folly, the distraction of the British councils, blasted our swelling hopes, and spread a gloom over this western hemisphere.

The hearts of Britons and Americans, which

lately felt the generous glow of mutual confidence and love, now burn with jealousy and rage. Though but of yesterday, I recollect (deeply affected at the ill-boding change) the happy hours that passed whilst Britain and America rejoiced in the prosperity and greatness of each other. Heaven grant those halcyon days may soon return! But now the Briton too often looks on the American with an envious eye, taught to consider his just plea for the enjoyment of his earnings, as the effect of pride and stubborn opposition to the parent country. Whilst the American beholds the Briton as the ruffian, ready first to take away his property, and next, what is still dearer to every virtuous man, the liberty of his country.

When the measures of administration had disgusted the colonies to the highest degree, and the people of Great Britain had, by artifice and falsehood, been irritated against America, an army was sent over to enforce submission to certain acts of the British Parliament, which reason scorned to countenance, and which placemen and pensioners were found unable to support.

Martial law, and the government of a well-regulated city, are so entirely different, that it has always been considered as improper to quarter troops in populous cities; frequent disputes must necessarily arise between the citizen and the soldier, even if no previous animosities subsist. And it is further certain, from a consideration of the nature of mankind, as well as from constant experience, that standing armies always endanger the liberty of the subject. But when the people, on the one part, considered the army as sent to enslave them, and the army, on the other, were taught to look on the people as in a state of rebellion, it was but just to fear the most disagreeable consequences. Our fears, we have seen, were but too well grounded.

The many injuries offered to the town, I pass over in silence. I cannot now mark out the path which led to that unequalled scene of horror, the sad remembrance of which takes the full possession of my soul. The sanguinary theatre again opens itself to view. The baleful images of terror crowd around me; and discontented ghosts, with hollow groans, appear to solemnize the anniversary of the fifth of March.

Approach we then the melancholy walk of death. Hither let me call the gay companion; here let him drop a farewell tear upon that body which so late he saw vigorous and warm with social mirth; hither let me lead the tender mother to weep over her beloved son—come, widowed mourner, here satiate thy grief; behold thy murdered husband gasping on the ground, and to complete the pompous show of wretchedness, bring in each hand thy infant children to bewail their father's fate—take heed, ye orphan babes, lest, whilst your streaming eyes are fixed upon the ghastly corpse, your feet slide on the stones bespattered with your



father's brains! \* Enough; this tragedy need not be heightened by an infant weltering in the blood of him that gave it birth. Nature, reluctant, shrinks already from the view, and the chilled blood rolls slowly backward to its fountain. We wildly stare about, and with amazement ask who spread this ruin around us? What wretch has dared deface the image of his God? Has haughty France, or cruel Spain, sent forth her myrmidons? Has the grim savage rushed again from the far distant wilderness; or does some fiend, fierce from the depth of hell, with all the rancorous malice which the apostate damned can feel, twang her destructive bow, and hurl her deadly arrows at our breast? No, none of these—but, how astonishing! it is the hand of Britain that inflicts the wound! The arms of George, our rightful king, have been employed to shed that blood, when justice, or the honor of his crown, had called his subjects to the field.

But pity, grief, astonishment, with all the softer movements of the soul, must now give way to stronger passions. Say, fellow-citizens, what dreadful thought now swells your heaving bosoms; you fly to arms—sharp indignation flashes from each eye—revenge gnashes her iron teeth—death grins a hideous smile, secure to drench his greedy jaws in human gore—whilst hovering furies darken all the air!

But stop, my bold, adventurous countrymen; stain not your weapons with the blood of Britons. Attend to reason's voice; humanity puts in her claim, and sues to be again admitted to her wonted seat, the bosom of the brave. Revenge is far beneath the noble mind. Many, perhaps, compelled to rank among the vile assassins, do from their inmost souls detest the barbarous action. The winged death, shot from your arms, may chance to pierce some breast that bleeds already for your injured country.

The storm subsides—a solemn pause ensues—you spare—upon condition they depart. They go—they quit your city—they no more shall give offence. Thus closes the important drama.

And could it have been conceived that we again should have seen a British army in our land, sent to enforce obedience to acts of Parliament destructive of our liberty? But the royal ear, far distant from this western world, has been assaulted by the tongue of slander; and villains, traitorous alike to king and country, have prevailed upon a gracious prince to clothe his countenance with wrath, and to erect the hostile banner against a people ever affectionate and loyal to him and his illustrious predecessors of the House of Hanover. Our streets are again filled with armed men; our harbor is crowded with ships of war; but these cannot intimidate us; our liberty must be preserved; it is far dearer than life—we hold it even dear

as our allegiance; we must defend it against the attacks of friends as well as enemies; we cannot suffer even Britons to ravish it from us.

No longer could we reflect with generous pride, on the heroic actions of our American forefathers; no longer boast our origin from that far-famed island, whose warlike sons have so often drawn their well-tried swords to save her from the ravages of tyranny; could we, but for a moment, entertain the thought of giving up our liberty. The man who meanly will submit to wear a shackle, contemns the noblest gift of heaven, and impiously affronts the God that made him free.

It was a maxim of the Roman people, which eminently conduced to the greatness of that state, never to despair of the commonwealth. The maxim may prove as salutary to us now, as it did to them. Short-sighted mortals see not the numerous links of small and great events, which form the chain on which the fate of kings and nations is suspended. Ease and prosperity, though pleasing for a day, have often sunk a people into effeminacy and sloth. Hardships and dangers, though we for ever strive to shun them, have frequently called forth such virtues as have commanded the applause and reverence of an admiring world. Our country loudly calls you to be circumspect, vigilant, active and brave. Perhaps, (all gracious heaven avert it,) perhaps, the power of Britain, a nation great in war, by some malignant influence, may be employed to enslave you; but let not even this discourage you. Her arms, 'tis true, have filled the world with terror; her troops have reaped the laurels of the field; her fleets have rode triumphant on the sea; and when, or where, did you, my countrymen, depart inglorious from the field of fight? You too can show the trophies of your forefathers' victories and your own; can name the fortresses and battles you have won; and many of you count the honorable scars of wounds received, whilst fighting for your king and country.

Where justice is the standard, heaven is the warrior's shield: but conscious guilt unnerves the arm that lifts the sword against the innocent. Britain, united with these colonies by commerce and affection, by interest and blood, may mock the threats of France and Spain; may be the seat of universal empire. But should America, either by force, or those more dangerous engines, luxury and corruption, ever be brought into a state of vassalage, Britain must lose her freedom also. No longer shall she sit the empress of the sea; her ships no more shall waft her thunders over the wide ocean; the wreath shall wither on her temples; her weakened arm shall be unable to defend her coasts; and she, at last, must bow her venerable head to some proud foreigner's despotic rule.

But if, from past events, we may venture to form a judgment of the future, we justly may expect that the devices of our enemies will but increase the triumphs of our country. I

\* After Mr. Gray had been shot through the body, and had fallen dead on the ground, a bayonet was pushed through his skull; part of the bone being broken, his brains fell out upon the pavement.

must indulge a hope that Britain's liberty, as well as ours, will eventually be preserved by the virtue of America.

The attempt of the British Parliament to raise a revenue from America, and our denial of their right to do it, have excited an almost universal inquiry into the right of mankind in general, and of British subjects in particular; the necessary result of which must be such a liberality of sentiment, and such a jealousy of those in power, as will, better than an adamantine wall, secure us against the future approaches of despotism.

The malice of the Boston port-bill has been defeated, in a very considerable degree, by giving you an opportunity of deserving, and our brethren in this and our sister colonies, an opportunity of bestowing those benefactions which have delighted your friends and astonished your enemies, not only in America, but in Europe also. And what is more valuable still, the sympathetic feelings for a brother in distress, and the grateful emotions, excited in the breast of him who finds relief, must for ever endear each to the other, and form those indissoluble bonds of friendship and affection, on which the preservation of our rights so evidently depend.

The mutilation of our charter has made every other colony jealous for its own; for this, if once submitted to by us, would set on float the property and government of every British settlement upon the continent. If charters are not deemed sacred, how miserably precarious is every thing founded upon them!

Even the sending troops to put these acts in execution, is not without advantage to us. The exactness and beauty of their discipline inspire our youth with ardor in the pursuit of military knowledge. Charles the Invincible taught Peter the Great the art of war. The battle of Pultowa convinced Charles of the proficiency Peter had made.

Our country is in danger, but not to be despaired of. Our enemies are numerous and powerful; but we have many friends, determining to be free, and heaven and earth will aid the resolution. On you depend the fortunes of America. You are to decide the important question, on which rest the happiness and liberty of millions yet unborn. Act worthy of yourselves. The faltering tongue of hoary age, calls on you to support your country. The lisping infant raises its suppliant hands, imploring defence against the monster slavery. Your fathers look from their celestial seats with smiling approbation on their sons, who boldly stand forth in the cause of virtue; but sternly frown upon the

inhuman miscreant, who, to secure the loaves and fishes to himself, would breed a serpent to destroy his children.

But, pardon me, my fellow-citizens, I know you want not zeal or fortitude. You will maintain your rights, or perish in the generous struggle. However difficult the combat, you never will decline it when freedom is the prize. An independence of Great Britain is not our aim. No, our wish is, that Britain and the colonies may, like the oak and ivy, grow and increase in strength together. But whilst the infatuated plan of making one part of the empire slaves to the other is persisted in, the interests and safety of Britain, as well as the colonies, require that the wise measures, recommended by the honorable the Continental Congress, be steadily pursued; whereby the unnatural contest between a parent honored and a child beloved, may probably be brought to such an issue, as that the peace and happiness of both may be established upon a lasting basis. But if these pacific measures are ineffectual, and it appears that the only way to safety is through fields of blood, I know you will not turn your faces from your foes, but will, undauntedly, press forward, until tyranny is trodden under foot, and you have fixed your adored goddess liberty, fast by a Brunswick's side, on the American throne.

You then, who have nobly espoused your country's cause, who generously have sacrificed wealth and ease; who have despised the pomp and show of tinsel'd greatness; refused the summons to the festive board; been deaf to the alluring calls of luxury and mirth; who have forsaken the downy pillow, to keep your vigils by the midnight lamp for the salvation of your invaded country, that you might break the fowler's snare, and disappoint the vulture of his prey—you then will reap that harvest of renown which you so justly have deserved. Your country shall pay her grateful tribute of applause. Even the children of your most inveterate enemies, ashamed to tell from whom they sprang, while they, in secret, curse their stupid, cruel parents, shall join the general voice of gratitude to those who broke the fetters which their fathers forged.

Having redeemed your country, and secured the blessing to future generations, who, fired by your example, shall emulate your virtues, and learn from you the heavenly art of making millions happy; with heartfelt joy, with transports all your own, you cry, the glorious work is done; then drop the mantle to some young Elisha, and take your seats with kindred spirits in your native skies!

## JAMES WILSON.

THE illustrious subject of this sketch holds a prominent position in the annals of America. more especially in those of Pennsylvania. He was born, some time in the year 1742, of respectable parents, who resided in the neighborhood of St. Andrews, in the lowlands of Scotland. After receiving an excellent classical education at the several universities of St. Andrews, Glasgow, and Edinburgh, he finished his studies in rhetoric and logic under the tuition of the world-renowned Doctors Blair and Watts. Soon after the completion of these studies, he resolved to emigrate to America, and endeavor, by the proper exercise of his talents and industry, to realize that independence which his own country could not afford. Having landed at New York, he travelled to Philadelphia, which place he reached in the beginning of the year 1766. He was then about twenty-one years of age. Through the influence of letters of high recommendation he had brought to some of the eminent men of Philadelphia, among whom was Dr. Richard Peters, rector of Christ and St. Peter's churches, he was appointed an usher in the college of that city, in which position he remained but a few months.

Subsequently he commenced the study of law in the office of the celebrated John Dickinson, and after two years of serious and laborious application, he was admitted to practice, and settled in Reading, Pennsylvania. Soon after he removed to Carlisle, in the same State, where he became eminent in his profession, and acquired considerable practice. At this place an incident occurred, which gave him a high place in the estimation of the first men of the province, and also gained him great celebrity as an advocate. An important land cause, between the proprietaries of Pennsylvania and one Samuel Wallace, an extensive land dealer, came on for trial in one of the county courts. Mr. Wilson was retained by the latter, and Mr. Chew, the attorney-general, appeared for the proprietaries. It was particularly noticed by the persons in court, that the attorney-general fixed his eyes upon Mr. Wilson soon after he commenced his argument, and gazed at him with wonder and admiration until he had concluded. So successfully did he manage the cause, that his associates thought it needless to add to his remarks. Before the close of the session of the court, he was retained in another similar cause; and his standing at the bar was thereafter prominent and unalterable. While a resident of Carlisle, he was chosen a colonel of a regiment of militia, and the public stores at that place were committed to his care; but he never was in active service.

Mr. Wilson seems to have inherited a propensity for speculation from his father, who, it appears, was "continually led on by the bright promises of adventures, and was a constant pecuniary sufferer." Notwithstanding the extensive support and patronage he received from the public, he frequently became embarrassed by the unfortunate terminations of his speculations, and suffered the severest privations. Yet in the midst of these sufferings, it was his constant care to remit the little he could spare to his mother in Scotland, who had been left in limited circumstances on the death of her husband. To the day of her death, he manifested an earnest and commendable solicitude for her comfort, and used every method in his power to alleviate her wants and smooth her downward path to the tomb.

When the British ministry commenced its oppressions, the political career of Mr. Wilson began. Although a Scotchman by birth, he was American in his principles. He wrote freely and

powerfully in favor of American rights, and never swerved from his zealous attachment to the cause of the colonists. A few months previous to the meeting of the Continental Congress in 1774, he was a member of the provincial convention of Pennsylvania, which had convened to concert plans to redress the wrongs imposed upon the colonies. During the session of this convention he exhibited such splendid talents and lofty patriotism, that he was nominated a delegate to the national assembly, with his old law teacher, John Dickinson. His appointment was strongly opposed by Joseph Galloway,\* who had long been a bitter opponent, and he was defeated; but on the sixth of May of the next year (1775), he was elected and took his seat. He continued in the Congress until September, 1777, when by the intrigues and machinations of his political enemies he was superseded. About this period he removed from Carlisle to Annapolis, Maryland, where he remained but one year, after which he returned to Philadelphia, which place thereafter became his permanent abode. On the fifth of June, 1779, Mr. Gerard, the first minister plenipotentiary from France, appointed Mr. Wilson advocate-general of the French nation in the United States. Congress was notified of his appointment on the fifteenth of September, of the same year, and on the eighteenth of February, 1781, the King of France issued letters patent confirming it. The duties of this office Mr. Wilson fulfilled to the satisfaction of the king, and at the close of his service he was rewarded by that monarch with ten thousand livres.

Notwithstanding his eminent services to the colonies, Mr. Wilson became the object and victim of political intrigue. His enemies charged him with opposing the Declaration of Independence, but the fact of his signing that instrument shows the sincerity of his attachment to the best interests of the colonists, however he may have manifested that sincerity before the declaration. In the year 1779, the life of Mr. Wilson was put in great danger by a band of heated partisans, under the pretext of his holding sentiments inimical to popular institutions. At that time party spirit in Pennsylvania had taken a consistency, and politicians were divided into constitutionalists and republicans. The first adhered to the constitution already formed, which was reprobated by the others for its total deficiency in checks and counterbalancing powers, thence tending, as it was alleged, to rash and oppressive proceedings. The term *republicans* was embraced as recognizing the principles of the revolution, and as indicative, perhaps, of tenets, which admitted the utility of modifications and restraints in a system resting upon the broad basis of general suffrage and popular sovereignty. Mr. Wilson was one of the leaders of the republican party, and through the artful designs of his opponents in the constitutional party, he had become particularly obnoxious. He was charged in his professional character with defending *tories*, and befriending the foes to the principles on which the opposition to the claims of Great Britain was founded. The affair of "*Fort Wilson*," as his house was thereafter denominated, arose from this opinion, of which those who designed that transaction took advantage for party purposes.

About the middle of September, 1779, a committee, appointed at a town meeting, regulated the prices of rum, salt, sugar, coffee, flour, &c.—a measure which was strongly opposed by the importers. Robert Morris, Blair McClenachen, John Willcocks, and a number of other staunch whigs, had a quantity of these articles in their stores, which they refused to dispose of at the regulated prices. About the last of the month, a great number of the lower class from the city and liberties collected, and marched through the city, threatening to break open the stores, distribute the goods, and punish those who refused to open their warehouses. On the morning of the 4th of October, placards were posted, menacing Robert Morris, Blair McClenachen, and many others: Mr. Wilson was proscribed by the mob, for having exercised his professional

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\* Joseph Galloway was a member of the Pennsylvania Assembly in 1764, and after having been speaker of that body for several sessions, he was appointed a delegate to the Congress of 1774. He afterwards deserted the American cause, joining the British at New York, in December, 1776, and remained with the army till June, 1778. In 1779 he was examined before the House of Commons on the transactions in America, and his representations did not add much to the credit of the British officers. He was the author of several important papers relative to the revolutionary war. His defection was very severely commented on by his friends, whose cause he had deserted. Stiles, in his manuscript diary, under the date of October 1st, 1775, says: "Mr. Galloway has also fallen from a great height into contempt and infamy; but he never was entirely confided in as a thorough son of liberty." He died at London in 1803.

duty as a lawyer, in behalf of certain persons who had been prosecuted for treason; and the punishment decreed for his crime, was banishment to the enemy, yet in New York. But this was not the real cause which produced so lamentable an instance of popular delusion: *that* was to be found in the superior talents and respectability of the republican party. The gentlemen threatened determined to defend themselves, and with a number of their friends, to the amount of about thirty or forty, took post at the south-west corner of Walnut and Third streets, in a house belonging to and occupied by Mr. Wilson: it was then a large, old-fashioned brick building, with an extensive garden on Third and Walnut streets. Among those in the house were Messrs. Wilson, Morris, Burd, George Clymer, Daniel Clymer, John T. Mifflin, Allen McLean, Sharp Delany, George Campbell, Paul Beck, Thomas Lawrence, Andrew Robinson, John Potts, Samuel C. Morris, Captain Campbell, and Generals Mifflin, Nichols, and Thomson. They were provided with arms, but their stock of ammunition was very small. While the mob was marching down, General Nichols and Daniel Clymer proceeded hastily to the arsenal at Carpenters' Hall, and filled their pockets with cartridges: this constituted their whole supply. In the mean time, the mob and militia—for no regular troops took part in the riot—assembled on the commons, while a meeting of the principal citizens took place at the coffee-house. A deputation was sent, to endeavor to prevail on them to disperse, but without effect. The first troop of city cavalry, being apprised of what was going forward, and anxious for the safety of their fellow-citizens, assembled at their stables, a fixed place of rendezvous, and agreed to have their horses saddled, and ready to mount at a moment's warning. Notice was to be given to as many members as could be found; and a part was to assemble in Dock, below Second street, and join the party at the stables. For a time a deceitful calm prevailed; at the hour of dinner, the members of the troop retired to their respective homes, and the rebels seized the opportunity to march into the city. The armed men amounted to two hundred, and were commanded by Mills, a North Carolina captain; Faulkner, a ship-joiner; Pickering, a tailor; and one Bonham, a man of low character. They marched down Chestnut to Second street—down Second to Walnut—and up Walnut to Mr. Wilson's house, with drums beating, and two pieces of cannon. They immediately commenced firing on the house, which was warmly returned by the garrison. Finding they could make no impression, the mob procured, from a blacksmith's shop in the neighborhood, a crowbar and sledge, and proceeded to force the door. At the critical moment, when the door yielded to their efforts, the horse made their appearance: had they succeeded in effecting an entrance, every individual in the house would, doubtless, have been murdered.

After the troop had retired, a few of the members, having received intelligence that the mob were marching into town, hastened to the established rendezvous. Collecting thus by mere accident, their number only amounted to *seven*; these were, Major Lennox, Major Nichols, Major William Nichols, Thomas Morris, Alexander Nesbitt, Isaac Coxe, and Thomas Leiper. This small body resolved to attempt the rescue of their fellow-citizens. On their route they were joined by two troopers belonging to Colonel Bayler's regiment, quartered at Bristol; and turning rapidly and suddenly round the corner of Chestnut street, they charged the mob. When the cry of "the horse! the horse!" was raised, the rioters, ignorant of their numbers, dispersed in every direction, but not before two other detachments of the first troop had reached the scene. Many of them were arrested, delivered to the civil authority, and committed to prison; and as the sword was very freely used, a considerable number were severely wounded. One man and one boy were killed in the streets: in the house, Captain Campbell was killed, and Mr. Mifflin and Mr. Samuel C. Morris were wounded. The troop patrolled the streets the greater part of the night. The citizens turned out *en masse*, and placed a guard at the powder magazine and the arsenal. It was some days before order was restored; and the troop, from the part they had taken, found it necessary to keep much together, and hold themselves in readiness to act in support of each other. Major Lennox was particularly marked out for destruction. He retired to his house at Germantown. The mob followed, and surrounded it during the night, and prepared to force an entrance. Anxious to gain time, he pledged his honor that he would open the door as soon as daylight appeared. In the mean time, he contrived to despatch an intrepid woman, who lived in his family, to the city for assistance; and a party of the first troop

arrived in season to protect their comrade; but he was compelled to return to town for safety. He was for a number of years saluted in the market by the title of "brother butcher," owing in part to his having been without a coat on the day of the riot: having on a long coat, he was obliged to cast it aside, to prevent being dragged from his horse.

The gentlemen who had comprised the garrison were advised to leave the city, where their lives were endangered. General Mifflin, and about thirty others, accordingly met at Mr. Gray's house, about five miles below Gray's ferry, where a council was called, and it was resolved to return to town without any appearance of intimidation. But it was deemed expedient that Mr. Wilson should absent himself for a time; the others continued to walk as usual in public, and attended the funeral of the unfortunate Captain Campbell. Thus ended the disgraceful affair.\*

In 1781, Mr. Wilson was appointed by Congress one of the directors of the Bank of North America, which institution had been designed by the celebrated financier, Robert Morris, for the purpose of supporting the finances of the United States. On the 12th of November, 1782, he was re-elected to Congress, and the same year, the President and Council of Pennsylvania appointed him one of the councillors and agents, in the celebrated controversy existing between that State and Connecticut, relative to the lands at Wyoming. The successful result of this dispute in favor of Pennsylvania, was in some degree attributable to the exertions of Mr. Wilson. Again, in 1785, he was elected to Congress; and in 1787 he was a member of the convention which met at Philadelphia for the purpose of forming the Federal Constitution. In this character he gained much applause for his ability and usefulness. "Being a fluent speaker, and possessing deep political sagacity and foresight, he entered almost daily into the arguments which arose on the great and important points necessarily involved in the formation of a new and adequate government." He was also a member of the Pennsylvania convention for the ratification of the Federal Constitution. In a powerful speech, he showed what difficulties the Federal Convention had to encounter in framing it, and directed his remarks in favor of its adoption.

In 1789, President Washington appointed Mr. Wilson one of the first judges of the Supreme Court of the United States, in which office he remained until his death, discharging its functions with integrity and ability. During this time he also occupied the chair of law in the College of Philadelphia; and in 1791 he revised the laws of Pennsylvania, in accordance with a resolve of the legislature of that commonwealth. While on a circuit in his judicial character, he died at Edenton, North Carolina, on the 28th of August, 1798. His works, including his lectures before the law students at the Philadelphia College, were published in 1804.

#### VINDICATION OF THE COLONIES.

The king, in his speech at the opening of Parliament, in November, 1774, informed that assembly that "a most daring spirit of resistance and disobedience still prevailed in Massachusetts, and had broken forth in fresh violences of a criminal nature; that the most proper and effectual methods had been taken to prevent these mischiefs; and that they, the Parliament, might depend upon a firm resolution, to withstand every attempt to weaken or

impair the supreme authority of Parliament, over all the dominions of the Crown." The following speech, in reference to this declaration of the king, was delivered by Mr. Wilson, in January, 1775, in the Convention for the Province of Pennsylvania:

MR. CHAIRMAN: Whence, sir, proceeds all the invidious and ill-grounded clamor against the colonists of America? Why are they stigmatized in Britain, as licentious and ungovernable? Why is their virtuous opposition to the illegal attempts of their governors, represented under the falsest colors, and placed in the most ungracious point of view? This opposition, when exhibited in its true light, and when

\* See Sanderson's Biography of the Signers of the Declaration of Independence, vol. 6th; Graydon's Memoirs, edited by Littell, page 830, et seq.; Watson's Annals of Philadelphia, vol. 1st, p. 425.

viewed, with unjaundiced eyes, from a proper situation, and at a proper distance, stands confessed the lovely offspring of freedom. It breathes the spirit of its parent. Of this ethereal spirit, the whole conduct, and particularly the late conduct of the colonists, has shown them eminently possessed. It has animated and regulated every part of their proceedings. It has been recognized to be genuine, by all those symptoms and effects, by which it has been distinguished in other ages and other countries. It has been calm and regular: it has not acted without occasion: it has not acted disproportionately to the occasion. As the attempts, open or secret, to undermine or to destroy it, have been repeated or enforced; in a just degree, its vigilance and its vigor have been exerted to defeat or to disappoint them. As its exertions have been sufficient for those purposes hitherto, let us hence draw a joyful prognostic, that they will continue sufficient for those purposes hereafter. It is not yet exhausted; it will still operate irresistibly whenever a necessary occasion shall call forth its strength.

Permit me, sir, by appealing, in a few instances, to the spirit and conduct of the colonists, to evince that what I have said of them is just. Did they disclose any uneasiness at the proceedings and claims of the British Parliament, before those claims and proceedings afforded a reasonable cause for it? Did they even disclose any uneasiness, when a reasonable cause for it was first given? Our rights were invaded by their regulations of our internal policy. We submitted to them: we were unwilling to oppose them. The spirit of liberty was slow to act. When those invasions were renewed; when the efficacy and malignancy of them were attempted to be redoubled by the stamp act; when chains were formed for us; and preparations were made for riveting them on our limbs, what measures did we pursue? The spirit of liberty found it necessary now to act: but she acted with the calmness and decent dignity suited to her character. Were we rash or seditious? Did we discover want of loyalty to our sovereign? Did we betray want of affection to our brethren in Britain? Let our dutiful and reverential petitions to the throne—let our respectful, though firm, remonstrances to the Parliament—let our warm and affectionate addresses to our brethren, and (we will still call them,) our friends in Great Britain—let all those, transmitted from every part of the continent, testify the truth. By their testimony let our conduct be tried.

As our proceedings, during the existence and operation of the stamp act, prove fully and incontestably the painful sensations that tortured our breasts from the prospect of disunion with Britain; the peals of joy, which burst forth universally, upon the repeal of that odious statute, loudly proclaim the heartfelt delight produced in us by a reconciliation with her. Unsuspicious, because undesigning, we buried our complaints and the causes of them, in obli-

vion, and returned, with eagerness, to our former unreserved confidence. Our connection with our parent country, and the reciprocal blessings resulting from it to her and to us, were the favorite and pleasing topics of our public discourses and our private conversations. Lulled in delightful security, we dreamed of nothing but increasing fondness and friendship, cemented and strengthened by a kind and perpetual communication of good offices. Soon, however, too soon, were we awakened from the soothing dreams! Our enemies renewed their designs against us, not with less malice, but with more art. Under the plausible pretence of regulating our trade, and, at the same time, of making provision for the administration of justice and the support of government, in some of the colonies, they pursued their scheme of depriving us of our property without our consent. As the attempts to distress us, and to degrade us to a rank inferior to that of freemen, appeared now to be reduced into a regular system, it became proper, on our part, to form a regular system for counteracting them. We ceased to import goods from Great Britain. Was this measure dictated by selfishness or by licentiousness? Did it not injure ourselves, while it injured the British merchants and manufacturers? Was it inconsistent with the peaceful demeanor of subjects to abstain from making purchases, when our freedom and our safety rendered it necessary for us to abstain from them? A regard for our freedom and our safety was our only motive; for no sooner had the Parliament, by repealing part of the revenue laws, inspired us with the flattering hopes that they had departed from their intentions of oppressing and of taxing us, than we forsook our plan for defeating those intentions, and began to import as formerly. Far from being peevish or capacious, we took no public notice even of their declaratory law of dominion over us: our candor led us to consider it as a decent expedient of retreating from the actual exercise of that dominion.

But, alas! the root of bitterness still remained. The duty on tea was reserved to furnish occasion to the ministry for a new effort to enslave and to ruin us; and the East India Company were chosen, and consented to be the detested instruments of ministerial despotism and cruelty. A cargo of their tea arrived at Boston. By a low artifice of the governor, and by the wicked activity of the tools of government, it was rendered impossible to store it up, or to send it back, as was done at other places. A number of persons, unknown, destroyed it.

Let us here make a concession to our enemies: let us suppose, that the transaction deserves all the dark and hideous colors, in which they have painted it: let us even suppose, (for our cause admits of an excess of candor,) that all their exaggerated accounts of it were confined strictly to the truth: what will follow? Will it follow, that every British colony in America, or even the colony of Massachusetts

Bay, or even the town of Boston, in that colony, merits the imputation of being factious and seditious? Let the frequent mobs and riots that have happened in Great Britain upon much more trivial occasions, shame our calumniators into silence. Will it follow, because the rules of order and regular government were, in that instance, violated by the offenders, that, for this reason, the principles of the constitution, and the maxims of justice, must be violated by their punishment? Will it follow, because those who were guilty could not be known, that, therefore, those who were known not to be guilty, must suffer? Will it follow, that even the guilty should be condemned without being heard—that they should be condemned upon partial testimony, upon the representations of their avowed and embittered enemies? Why were they not tried in courts of justice, known to their constitution, and by juries of their neighborhood? Their courts and their juries were not, in the case of Captain Preston,\* transported beyond the bounds of justice by their resentment: why, then, should it be presumed, that, in the case of those offenders, they would be prevented from doing justice by their affection? But the colonists, it seems, must be stripped of their judicial, as well as of their legislative powers. They must be bound by a legislature, they must be tried by a jurisdiction, not their own. Their constitutions must be changed: their liberties must be abridged: and those who shall be most infamously active in changing their constitutions and abridging their liberties, must, by an express provision, be exempted from punishment.

I do not exaggerate the matter, sir, when I extend these observations to all the colonists. The Parliament meant to extend the effects of their proceedings to all the colonists. The plan, on which their proceedings are formed, extends to them all. From an incident of no very uncommon or atrocious nature, which happened in one colony, in one town in that colony, and in which only a few of the inhabitants of that town took a part, an occasion has been taken by those, who probably intended it, and who certainly prepared the way for it, to impose upon that colony, and to lay a foundation and a precedent for imposing upon all the rest, a system of statutes, arbitrary, unconstitutional, oppressive, in every view, and in every degree subversive of the rights, and inconsistent with even the name of freemen.

Were the colonists so blind as not to discern the consequences of these measures? Were they so supinely inactive, as to take no steps for guarding against them? They were not. They ought not to have been so. We saw a breach made in those barriers, which our ancestors, British and American, with so much care, with so much danger, with so much treasure, and with so much blood, had erected, cemented and

established for the security of their liberties; and—with filial piety let us mention it—of ours. We saw the attack actually begun upon one part: ought we to have folded our hands in indolence, to have lulled our eyes in slumbers, till the attack was carried on, so as to become irresistible, in every part? Sir, I presume to think not. We were roused; we were alarmed, as we had reason to be. But still our measures have been such as the spirit of liberty and of loyalty directed; not such as a spirit of sedition or of disaffection would pursue. Our counsels have been conducted without rashness and faction: our resolutions have been taken without frenzy or fury.

That the sentiments of every individual concerning that important object, his liberty, might be known and regarded, meetings have been held, and deliberations carried on in every particular district. That the sentiments of all those individuals might gradually and regularly be collected into a single point, and the conduct of each inspired and directed by the result of the whole united; county committees, provincial conventions, a Continental Congress have been appointed, have met and resolved. By this means, a chain—more inestimable, and, while the necessity for it continues, we hope, more indissoluble than one of gold—a chain of freedom has been formed, of which every individual in these colonies, who is willing to preserve the greatest of human blessings, his liberty, has the pleasure of beholding himself a link.

Are these measures, sir, the brats of disloyalty, of disaffection? There are miscreants among us, wasps that suck poison from the most salubrious flowers, who tell us they are. They tell us that all those assemblies are unlawful, and unauthorized by our constitutions; and that all their deliberations and resolutions are so many transgressions of the duty of subjects. The utmost malice brooding over the utmost baseness, and nothing but such a hated commixture, must have hatched this calumny. Do not those men know—would they have others not to know—that it was impossible for the inhabitants of the same province, and for the legislatures of the different provinces, to communicate their sentiments to one another in the modes appointed for such purposes, by their different constitutions? Do not they know—would they have others not to know—that all this was rendered impossible by those very persons, who now, or whose minions now, urge this objection against us? Do not they know—would they have others not to know—that the different assemblies, who could be dissolved by the governors, were, in consequence of ministerial mandates, dissolved by them, whenever they attempted to turn their attention to the greatest objects, which, as guardians of the liberty of their constituents, could be presented to their view? The arch enemy of the human race torments them only for those actions, to which he has tempted, but to which he has not

\* See *Life of John Adams*, vol. 1st, page 110, et seq. *Narrative of the Boston Massacre*.



necessarily obliged them. Those men refine even upon infernal malice: they accuse, they threaten us, (superlative impudence!) for taking those very steps which we were laid under the disagreeable necessity of taking by themselves, or by those in whose hateful service they are enlisted. But let them know, that our counsels, our deliberations, our resolutions, if not authorized by the forms, because that was rendered impossible by our enemies, are nevertheless authorized by that which weighs much more in the scale of reason—by the spirit of our constitutions. Was the convention of the barons at Runnymede, where the tyranny of John was checked, and *magna charta* was signed, authorized by the forms of the constitution? Was the Convention Parliament, that recalled Charles the Second, and restored the monarchy, authorized by the forms of the constitution? Was the convention of lords and commons, that placed King William on the throne, and secured the monarchy and liberty likewise, authorized by the forms of the constitution? I cannot conceal my emotions of pleasure, when I observe, that the objections of our adversaries cannot be urged against us, but in common with those venerable assemblies, whose proceedings formed such an accession to British liberty and British renown.

The resolutions entered into, and the recommendations given, by the Continental Congress, have stamped, in the plainest characters, the genuine and enlightened spirit of liberty, upon the conduct observed, and the measures pursued, in consequence of them. As the invasions of our rights have become more and more formidable, our opposition to them has increased in firmness and vigor, in a just, and in no more than a just, proportion. We will not import goods from Great Britain or Ireland: in a little time we will suspend our exportations to them; and, if the same illiberal and destructive system of policy be still carried on against us, in a little time more we will not consume their manufactures. In that colony, where the attacks have been most open, immediate and direct, some further steps have been taken, and those steps have met with the deserved approbation of the other provinces.

Is this scheme of conduct allied to rebellion? Can any symptoms of disloyalty to his majesty, of disinclination to his illustrious family, or of disregard to his authority, be traced in it? Those who would blend, and whose crimes have made it necessary for them to blend, the tyrannic acts of administration with the lawful measures of government, and to veil every flagitious procedure of the ministry under the venerable mantle of majesty, pretend to discover, and employ their emissaries to publish the pretended discovery of such symptoms. We are not, however, to be imposed upon by such shallow artifices. We know, that we have not violated the laws or the constitution; and that, therefore, we are safe as long as the laws retain their force and the constitution its vigor; and

that, whatever our demeanor be, we cannot be safe much longer. But another object demands our attention.

We behold, sir, with the deepest anguish we behold, that our opposition has not been as effectual as it has been constitutional. The hearts of our oppressors have not relented: our complaints have not been heard: our grievances have not been redressed: our rights are still invaded: and have we no cause to dread, that the invasions of them will be enforced, in a manner against which all reason and argument, and all opposition, of every peaceful kind, will be vain? Our opposition has hitherto increased with our oppression: shall it, in the most desperate of all contingencies, observe the same proportion?

Let us pause, sir, before we give an answer to this question. The fate of us; the fate of millions now alive; the fate of millions yet unborn, depends upon the answer. Let it be the result of calmness and intrepidity; let it be dictated by the principles of loyalty, and the principles of liberty. Let it be such, as never, in the worst events, to give us reason to reproach ourselves, or others reason to reproach us, for having done too much or too little.

Perhaps the following resolution may be found not altogether unbefitting our present situation. With the greatest deference, I submit it to the mature consideration of this assembly.

“That the act of the British Parliament for altering the charter and constitution of the colony of Massachusetts Bay, and those ‘for the impartial administration of justice’ in that colony, for shutting the port of Boston, and for quartering soldiers on the inhabitants of the colonies, are unconstitutional and void; and can confer no authority upon those who act under color of them. That the Crown cannot, by its prerogative, alter the charter or constitution of that colony: that all attempts to alter the said charter or constitution, unless by the authority of the legislature of that colony, are manifest violations of the rights of that colony, and illegal: that all force employed to carry such unjust and illegal attempts into execution, is force without authority: that it is the right of British subjects to resist such force: that this right is founded both upon the letter and the spirit of the British constitution.”

To prove, at this time, that those acts are unconstitutional and void is, I apprehend, altogether unnecessary. The doctrine has been proved fully, on other occasions, and has received the concurring assent of British America. It rests upon plain and indubitable truths. We do not send members to the British Parliament: we have parliaments, (it is immaterial what name they go by,) of our own.

That a void act can confer no authority upon those, who proceed under color of it, is a self-evident proposition.

Before I proceed to the other clauses, I think it useful to recur to some of the fundamental

maxims of the British constitution; upon which, as upon a rock, our wise ancestors erected that stable fabric, against which the gates of hell have not hitherto prevailed. Those maxims I shall apply fairly, and, I flatter myself, satisfactorily to evince every particular contained in the resolution.

The government of Britain, sir, was never an arbitrary government; our ancestors were never inconsiderate enough to trust those rights, which God and nature had given them, unreservedly into the hands of their princes. However difficult it may be, in other states, to prove an original contract subsisting in any other manner, and on any other conditions, than are naturally and necessarily implied in the very idea of the first institution of a state; it is the easiest thing imaginable, since the revolution of 1688, to prove it in our constitution, and to ascertain some of the material articles of which it consists. It has been often appealed to: it has been often broken, at least on one part: it has been often renewed: it has been often confirmed: it still subsists in its full force: "it binds the king as much as the meanest subject." The measures of his power, and the limits beyond which he cannot extend it, are circumscribed and regulated by the same authority, and with the same precision, as the measures of the subject's obedience; and the limits, beyond which he is under no obligation to practise it, are fixed and ascertained. Liberty is, by the constitution, of equal stability, of equal antiquity, and of equal authority with prerogative. The duties of the king and those of the subject are plainly reciprocal: they can be violated on neither side, unless they be performed on the other. The law is the common standard, by which the excesses of prerogative, as well as the excesses of liberty, are to be regulated and reformed.

Of this great compact between the king and his people, one essential article to be performed on his part is, that, in those cases where provision is expressly made and limitations set by the laws, his government shall be conducted according to those provisions, and restrained according to those limitations; that, in those cases which are not expressly provided for by the laws, it shall be conducted by the best rules of discretion, agreeably to the general spirit of the laws, and subserviently to their ultimate end—the interest and happiness of his subjects; that, in no case it shall be conducted contrary to the express, or to the implied principles of the constitution.

These general maxims, which we may justly consider as fundamentals of our government, will, by a plain and obvious application of them to the parts of the resolution remaining to be proved, demonstrate them to be strictly agreeable to the laws and constitution.

We can be at no loss in resolving, that the king cannot, by his prerogative, alter the charter or constitution of the colony of Massachusetts Bay. Upon what principle could such an

exertion of prerogative be justified? On the acts of Parliament? They are already proved to be void. On the discretionary power which the king has of acting where the laws are silent? That power must be subservient to the interest and happiness of those concerning whom it operates. But I go further. Instead of being supported by law, or the principles of prerogative, such an alteration is totally and absolutely repugnant to both. It is contrary to express law. The charter and constitution we speak of, are confirmed by the only legislative power capable of confirming them; and no other power, but that which can ratify, can destroy. If it is contrary to express law, the consequence is necessary, that it is contrary to the principles of prerogative; for prerogative can operate only when the law is silent.

In no view can this alteration be justified, or so much as excused. It cannot be justified or excused by the acts of Parliament; because the authority of Parliament does not extend to it: it cannot be justified or excused by the operation of prerogative; because this is none of the cases in which prerogative can operate: it cannot be justified or excused by the legislative authority of the colony; because that authority never has been, and, I presume, never will be given for any such purpose.

If I have proceeded hitherto, as I am persuaded I have, upon safe and sure ground, I can, with great confidence, advance a step further and say, that all attempts to alter the charter or constitution of that colony, unless by the authority of its own legislature, are violations of its rights, and illegal.

If those attempts are illegal, must not all force, employed to carry them into execution, be force employed against law, and without authority? The conclusion is unavoidable.

Have not British subjects, then, a right to resist such force—force acting with authority—force employed contrary to law—force employed to destroy the very existence of law and of liberty? They have, sir; and this right is secured to them both by the letter and the spirit of the British constitution, by which the measures and the conditions of their obedience are appointed. The British liberties, sir, and the means and the right of defending them, are not the grants of princes; and of what our princes never granted, they surely can never deprive us.

I beg leave, here, to mention and to obviate some plausible but ill-founded objections that have been, and will be, held forth by our adversaries against the principles of the resolution now before us. It will be observed that those employed for bringing about the proposed alteration in the charter and constitution of the colony of Massachusetts Bay, act by virtue of a commission for that purpose from his majesty; that all resistance of forces commissioned by his majesty is resistance of his majesty's authority and government, contrary to the duty of allegiance, and treasonable. These objections will be displayed in their most specious

colors; every artifice of chicanery and sophistry will be put in practice to establish them; law authorities, perhaps, will be quoted and tortured to prove them. Those principles of our constitution, which were designed to preserve and to secure the liberty of the people, and, for the sake of that, the tranquillity of government, will be perverted on this, as they have been on many other occasions, from their true intention, and will be made use of for the contrary purpose of endangering the latter and destroying the former. The names of the most exalted virtues on one hand, and of the most atrocious crimes on the other, will be employed in direct contradiction to the nature of those virtues and of those crimes; and in this manner those who cannot look beyond names will be deceived, and those whose aim it is to deceive by names will have an opportunity of accomplishing it. But, sir, this disguise will not impose upon us. We will look to things as well as to names; and, by doing so, we shall be fully satisfied that all those objections rest upon mere verbal sophistry, and have not even the remotest alliance with the principles of reason or of law.

In the first place, then, I say, that the persons who allege that those employed to alter the charter and constitution of Massachusetts Bay, act by virtue of a commission from his majesty for that purpose, speak improperly, and contrary to the truth of the case. I say, they act by virtue of no such commission; I say, it is impossible they can act by virtue of such a commission. What is called a commission either contains particular directions for the purpose mentioned, or it contains no such particular directions. In either case can those who act for that purpose act by virtue of a commission? In one case, what is called a commission is void; it has no legal existence; it can communicate no authority. In the other case, it extends not to the purpose mentioned. The latter point is too plain to be insisted on; I prove the former.

"*Id rex potest*," says the law, "*quod de jure potest*." The king's power is a power according to law. His commands, if the authority of Lord Chief Justice Hale may be depended upon, are under the directive power of the law; and consequently invalid, if unlawful. "Commissions," says my Lord Coke, "are legal, and are like the king's writs; and none are lawful but such as are allowed by the common law, or warranted by some act of Parliament."

Let us examine any commission expressly directing those to whom it is given, to use military force for carrying into execution the alterations proposed to be made in the charter and constitution of Massachusetts Bay, by the foregoing maxims and authorities; and what we have said concerning it will appear obvious and conclusive. It is not warranted by any act of Parliament, because, as has been mentioned on this, and has been proved on other occasions, any such act is void. It is not warranted, and I believe it will not be pretended that it is warranted, by the common law. It is not war-

ranted by the royal prerogative, because, as has already been fully shown, it is diametrically opposite to the principles and the ends of prerogative. Upon what foundation, then, can it lean and be supported? Upon none. Like an enchanted castle, it may terrify those whose eyes are affected by the magic influence of the sorcerers, despotism, and slavery; but so soon as the charm is dissolved, and the genuine rays of liberty and of the constitution dart in upon us, the formidable appearance vanishes, and we discover that it was the baseless fabric of a vision, that never had any real existence.

I have dwelt the longer upon this part of the objections urged against us by our adversaries, because this part is the foundation of all the others. We have now removed it; and they must fall of course. For if the force, acting for the purposes we have mentioned, does not act, and cannot act, by virtue of any commission from his majesty, the consequence is undeniable, that it acts without his majesty's authority; that the resistance of it is no resistance of his majesty's authority, nor incompatible with the duties of allegiance.

And now, sir, let me appeal to the impartial tribunal of reason and truth; let me appeal to every unprejudiced and judicious observer of the laws of Britain, and of the constitution of the British government; let me appeal, I say, whether the principles on which I argue, or the principles on which alone my arguments can be opposed, are those which ought to be adhered to and acted upon; which of them are most consonant to our laws and liberties; which of them have the strongest, and are likely to have the most effectual tendency to establish and secure the royal power and dignity.

Are we deficient in loyalty to his majesty? Let our conduct convict, for it will fully convict, the insinuation that we are, of falsehood. Our loyalty has always appeared in the true form of loyalty; in obeying our sovereign according to law: let those who would require it in any other form, know that we call the persons who execute his commands, when contrary to law, disloyal and traitors. Are we enemies to the power of the Crown? No, sir, we are its best friends: this friendship prompts us to wish that the power of the Crown may be firmly established on the most solid basis; but we know that the constitution alone will perpetuate the former, and securely uphold the latter. Are our principles irreverent to majesty? They are quite the reverse: we ascribe to it perfection almost divine. We say that the king can do no wrong: we say that to do wrong is the property, not of power, but of weakness. We feel oppression, and will oppose it; but we know, for our constitution tells us, that oppression can never spring from the throne. We must, therefore, search elsewhere for its source: our infallible guide will direct us to it. Our constitution tells us that all oppression springs from the ministers of the throne. The attributes of perfection ascribed

to the king, are, neither by the constitution nor in fact, communicable to his ministers. They may do wrong; they have often done wrong; they have been often punished for doing wrong.

Here we may discern the true cause of all the impudent clamor and unsupported accusations of the ministers and of their minions, that have been raised and made against the conduct of the Americans. Those ministers and minions are sensible that the opposition is directed, not against his majesty, but against them; because they have abused his majesty's confidence, brought discredit upon his government, and derogated from his justice. They see the public vengeance collected in dark clouds around them: their consciences tell them that it should be hurled, like a thunderbolt, at their guilty heads. Appalled with guilt and fear, they skulk behind the throne. Is it disrespectful to drag them into public view, and make a distinction between them and his majesty, under whose venerable name they daringly attempt to shelter their crimes? Nothing can more effectually contribute to establish his majesty on the throne, and to secure to him the affections of his people, than this distinction. By it we are taught to consider all the blessings of government as flowing from the throne; and to consider every instance of oppression as proceeding, which in truth is oftenest the case, from the ministers.

If, now, it is true that all force employed for

the purposes so often mentioned, is force unwarranted by any act of Parliament; unsupported by any principle of the common law; unauthorized by any commission from the Crown; that, instead of being employed for the support of the constitution and his majesty's government, it must be employed for the support of oppression and ministerial tyranny; if all this is true (and I flatter myself it appears to be true), can any one hesitate to say that to resist such force is lawful; and that both the letter and the spirit of the British constitution justify such resistance?

Resistance, both by the letter and the spirit of the British constitution, may be carried further, when necessity requires it, than I have carried it. Many examples in the English history might be adduced, and many authorities of the greatest weight might be brought to show that when the king, forgetting his character and his dignity, has stepped forth and openly avowed and taken a part in such iniquitous conduct as has been described; in such cases, indeed, the distinction above mentioned, wisely made by the constitution for the security of the Crown, could not be applied; because the Crown had unconstitutionally rendered the application of it impossible. What has been the consequence? The distinction between him and his ministers has been lost; but they have not been raised to his situation: he has sunk to theirs.

#### THE FEDERAL CONSTITUTION.

This speech, on the expediency of adopting the Federal Constitution, was delivered by Mr. Wilson, in the Convention of Pennsylvania, on the twenty-sixth of November, 1787.\*

The system proposed, by the late convention, for the government of the United States, is now before you. Of that convention I had the honor to be a member. As I am the only member of that body, who has the honor to be also a member of this, it may be expected that I should prepare the way for the deliberations of this assembly, by unfolding the difficulties which the late convention were obliged to encounter; by pointing out the end which they proposed to accomplish; and by tracing the general principles which they have adopted for the accomplishment of that end.

To form a good system of government for a single city or state, however limited as to territory, or inconsiderable as to numbers, has been thought to require the strongest efforts of human genius. With what conscious diffidence, then, must the members of the convention have

revolved in their minds the immense undertaking which was before them. Their views could not be confined to a small or a single community, but were expanded to a great number of States; several of which contain an extent of territory, and resources of population, equal to those of some of the most respectable kingdoms on the other side of the Atlantic. Nor were even these the only objects to be comprehended within their deliberations. Numerous States yet unformed, myriads of the human race, who will inhabit regions hitherto uncultivated, were to be affected by the result of their proceedings. It was necessary, therefore, to form their calculations on a scale commensurate to a large portion of the globe.

For my own part, I have been often lost in astonishment at the vastness of the prospect before us. To open the navigation of a single river was lately thought, in Europe, an enterprise adequate to imperial glory. But could the commercial scenes of the Scheldt be compared with those that, under a good government, will be exhibited on the Hudson, the Delaware, the Potomac, and the numerous other rivers, that water and are intended to enrich the dominions of the United States?

\* See note at page 13.

The difficulty of the business was equal to its magnitude. No small share of wisdom and address is requisite to combine and reconcile the jarring interests, that prevail, or seem to prevail in a single community. The United States contain already thirteen governments mutually independent. Those governments present to the Atlantic a front of fifteen hundred miles in extent. Their soil, their climates, their productions, their dimensions, their numbers, are different. In many instances, a difference and even an opposition subsists among their interests; and a difference and even an opposition is imagined to subsist in many more. An apparent interest produces the same attachment as a real one; and is often pursued with no less perseverance and vigor. When all these circumstances are seen and attentively considered, will any member of this honorable body be surprised, that such a diversity of things produced a proportioned diversity of sentiment? Will he be surprised that such a diversity of sentiment rendered a spirit of mutual forbearance and conciliation indispensably necessary to the success of the great work? And will he be surprised that mutual concessions and sacrifices were the consequences of mutual forbearance and conciliation? When the springs of opposition were so numerous and strong, and poured forth their waters in courses so varying, need we be surprised that the stream formed by their conjunction was impelled in a direction somewhat different from that, which each of them would have taken separately?

I have reason to think that a difficulty arose in the minds of some members of the convention from another consideration—their ideas of the temper and disposition of the people, for whom the constitution is proposed. The citizens of the United States, however different in some other respects, are well known to agree in one strongly marked feature of their character—a warm and keen sense of freedom and independence. This sense has been heightened by the glorious result of their late struggle against all the efforts of one of the most powerful nations of Europe. It was apprehended, I believe, by some, that a people so high-spirited would ill brook the restraints of an efficient government. I confess that this consideration did not influence my conduct. I knew my constituents to be high-spirited; but I knew them also to possess sound sense. I knew that, in the event, they would be best pleased with that system of government, which would best promote their freedom and happiness. I have often revolved this subject in my mind. I have supposed one of my constituents to ask me, why I gave such a vote on a particular question? I have always thought it would be a satisfactory answer to say—because I judged, upon the best consideration I could give, that such a vote was right. I have thought that it would be but a very poor compliment to my constituents to say that, in my opinion, such a vote would have been proper, but that I sup-

posed a contrary one would be more agreeable to those who sent me to the convention. I could not, even in idea, expose myself to such a retort as, upon the last answer, might have been justly made to me. Pray, sir, what reasons have you for supposing that a right vote would displease your constituents? Is this the proper return for the high confidence they have placed in you? If they have given cause for such a surmise, it was by choosing a representative, who could entertain such an opinion of them. I was under no apprehension, that the good people of this State would behold with displeasure the brightness of the rays of delegated power, when it only proved the superior splendor of the luminary, of which those rays were only the reflection.

A very important difficulty arose from comparing the extent of the country to be governed, with the kind of government which it would be proper to establish in it. It has been an opinion, countenanced by high authority, “that the natural property of small states is to be governed as a republic; of middling ones, to be subject to a monarch; and of large empires, to be swayed by a despotic prince; and that the consequence is, that, in order to preserve the principles of the established government the State must be supported in the extent it has acquired; and that the spirit of the State will alter in proportion as it extends or contracts its limits.”\* This opinion seems to be supported, rather than contradicted, by the history of the governments in the old world. Here then the difficulty appears in full view. On one hand, the United States contain an immense extent of territory, and, according to the foregoing opinion, a despotic government is best adapted to that extent. On the other hand, it was well known, that, however the citizens of the United States might, with pleasure, submit to the legitimate restraints of a republican constitution, they would reject, with indignation, the fetters of despotism. What then was to be done? The idea of a confederate republic presented itself. This kind of constitution has been thought to have “all the internal advantages of a republican, together with the external force of a monarchical government.”† Its description is, “a convention, by which several States agree to become members of a larger one, which they intend to establish. It is a kind of assemblage of societies, that constitute a new one, capable of increasing by means of farther association.”‡ The expanding quality of such a government is peculiarly fitted for the United States, the greatest part of whose territory is yet uncultivated.

But while this form of government enabled us to surmount the difficulty last mentioned, it conducted us to another, of which I am now to take notice. It left us almost without prece-

\* Mont. Sp. L. b. 8, c. 20.

† Id. b. 9, c. 1. 1 Paley, 199-202.

‡ Mont. Sp. L. b. 9, c. 1.

dent or guide; and, consequently, without the benefit of that instruction, which, in many cases, may be derived from the constitution, and history, and experience of other nations. Several associations have frequently been called by the name of confederate States, which have not, in propriety of language, deserved it. The Swiss Cantons are connected only by alliances. The United Netherlands are indeed an assemblage of societies; but this assemblage constitutes no new one; and, therefore, it does not correspond with the full definition of a confederate republic. The Germanic body is composed of such disproportioned and discordant materials, and its structure is so intricate and complex, that little useful knowledge can be drawn from it. Ancient history discloses, and barely discloses to our view, some confederate republics—the Achæan league, the Lycian confederacy, and the Amphictyonic council. But the facts recorded concerning their constitutions are so few and general, and their histories are so unmarked and defective, that no satisfactory information can be collected from them concerning many particular circumstances, from an accurate discernment and comparison of which alone, legitimate and practical inferences can be made from one constitution to another. Besides, the situation and dimensions of those confederacies, and the state of society, manners, and habits in them, were so different from those of the United States, that the most correct description could have supplied but a very small fund of applicable remark. Thus, in forming this system, we were deprived of many advantages, which the history and experience of other ages and other countries would, in other cases, have afforded us.

Permit me to add, in this place, that the science even of government itself, seems yet to be almost in its state of infancy. Governments, in general, have been the result of force, of fraud, and of accident. After a period of six thousand years has elapsed since the creation, the United States exhibit to the world the first instance, as far as we can learn, of a nation, unattacked by external force, unconvulsed by domestic insurrections, assembling voluntarily, deliberating fully, and deciding calmly, concerning that system of government, under which they would wish that they and their posterity should live. The ancients, so enlightened on other subjects, were very uninformed with regard to this. They seem scarcely to have had any idea of any other kinds of government, than the three simple forms designated by the epithets, monarchical, aristocratical, and democratical. I know that much and pleasing ingenuity has been exerted, in modern times, in drawing entertaining parallels between some of the ancient constitutions, and some of the mixed governments that have since existed in Europe. But I much suspect that, on strict examination, the instances of resemblance will be found to be few and weak; to be suggested by the improvements, which, in

subsequent ages, have been made in government, and not to be drawn immediately from the ancient constitutions themselves, as they were intended and understood by those who framed them. To illustrate this, a similar observation may be made on another subject. Admiring critics have fancied, that they have discovered in their favorite Homer the seeds of all the improvements in philosophy, and in the sciences, made since his time. What induces me to be of this opinion, is, that Tacitus, the profound politician Tacitus, who lived towards the latter end of those ages which are now denominated ancient, who undoubtedly had studied the constitutions of all the states and kingdoms known before and in his time, and who certainly was qualified, in an uncommon degree, for understanding the full force and operation of each of them, considers, after all he had known and read, a mixed government, composed of the three simple forms, as a thing rather to be wished than expected; and he thinks, that if such a government could even be instituted, its duration could not be long. One thing is very certain, that the doctrine of representation in government was altogether unknown to the ancients. Now the knowledge and practice of this doctrine is, in my opinion, essential to every system, that can possess the qualities of freedom, wisdom and energy.

It is worthy of remark, and the remark may, perhaps, excite some surprise, that representation of the people is not, even at this day, the sole principle of any government in Europe. Great Britain boasts, and she may well boast, of the improvement she has made in politics, by the admission of representation: for the improvement is important as far as it goes; but it by no means goes far enough. Is the executive power of Great Britain founded on representation? This is not pretended. Before the Revolution, many of the kings claimed to reign by divine right, and others by hereditary right; and even at the Revolution, nothing farther was effected or attempted, than the recognition of certain parts of an original contract,\* supposed at some remote period to have been made between the king and the people. A contract seems to exclude, rather than to imply, delegated power. The judges of Great Britain are appointed by the Crown. The judicial authority, therefore, does not depend upon representation, even in its most remote degree. Does representation prevail in the legislative department of the British government? Even here it does not predominate; though it may serve as a check. The legislature consists of three branches, the king, the lords, and the commons. Of these, only the latter are supposed by the constitution to represent the authority of the people. This short analysis clearly shows, to what a narrow corner of the British constitution the principle of representation is confined. I believe it does not extend farther, if

\* 1 Bl. Com. 233.

so far, in any other government in Europe. For the American States were reserved the glory and the happiness of diffusing this vital principle through all the constituent parts of government. Representation is the chain of communication between the people and those to whom they have committed the exercise of the powers of government. This chain may consist of one or more links; but in all cases it should be sufficiently strong and discernible.

To be left without guide or precedent was not the only difficulty in which the convention were involved by proposing to their constituents a plan of a confederate republic. They found themselves embarrassed with another of peculiar delicacy and importance; I mean that of drawing a proper line between the national government and the governments of the several States. It was easy to discover a proper and satisfactory principle on the subject. Whatever object of government is confined in its operation and effects within the bounds of a particular State, should be considered as belonging to the government of that State; whatever object of government extends in its operation or effects beyond the bounds of a particular State, should be considered as belonging to the government of the United States. But though this principle be sound and satisfactory, its application to particular cases would be accompanied with much difficulty; because, in its application, room must be allowed for great discretionary latitude of construction of the principle. In order to lessen or remove the difficulty arising from discretionary construction on this subject, an enumeration of particular instances, in which the application of the principle ought to take place, has been attempted with much industry and care. It is only in mathematical science, that a line can be described with mathematical precision. But I flatter myself that, upon the strictest investigation, the enumeration will be found to be safe and unexceptionable; and accurate too, in as great a degree as accuracy can be expected in a subject of this nature. Particulars under this head will be more properly explained when we descend to the minute view of the enumeration which is made in the proposed constitution.

After all, it will be necessary that, on a subject so peculiarly delicate as this, much prudence, much candor, much moderation, and much liberality should be exercised and displayed, both by the federal government and by the governments of the several States. It is to be hoped, that those virtues in government will be exercised and displayed, when we consider, that the powers of the federal government, and those of the State governments, are drawn from sources equally pure. If a difference can be discovered between them, it is in favor of the federal government; because that government is founded on a representation of the whole Union; whereas the government of any particular State is founded only on the representation of a part, inconsiderable when compared

with the whole. It is not more reasonable to suppose, that the counsels of the whole will embrace the interest of every part, than that the counsels of any part will embrace the interests of the whole.

I intend not, sir, by this description of the difficulties with which the convention was surrounded, to magnify their skill or their merit in surmounting them, or to insinuate that any predicament, in which the convention stood, should prevent the closest and most cautious scrutiny into the performance, which they have exhibited to their constituents and to the world. My intention is of far other and higher aim—to evince by the conflicts and difficulties which must arise from the many and powerful causes which I have enumerated, that it is hopeless and impracticable to form a constitution, which will, in every part, be acceptable to every citizen, or even to every government in the United States; and that all which can be expected is, to form such a constitution as, upon the whole, is the best that can possibly be obtained. Man and perfection!—a State and perfection!—an assemblage of States and perfection! Can we reasonably expect, however ardently we may wish, to behold the glorious union?

I can well recollect, though I believe I cannot convey to others, the impression which, on many occasions, was made by the difficulties which surrounded and pressed the convention. The great undertaking, at some times, seemed to be at a stand; at other times, its motions seemed to be retrograde. At the conclusion, however, of our work, many of the members expressed their astonishment at the success with which it terminated.

Having enumerated some of the difficulties which the convention were obliged to encounter in the course of their proceedings, I shall next point out the end which they proposed to accomplish. Our wants, our talents, our affections, our passions, all tell us that we were made for a state of society. But a state of society could not be supported long or happily without some civil restraint. It is true that, in a state of nature, any one individual may act uncontrolled by others; but it is equally true that, in such a state, every other individual may act uncontrolled by him. Amidst this universal independence, the dissensions and animosities between interfering members of the society would be numerous and ungovernable. The consequence would be, that each member, in such a natural state, would enjoy less liberty, and suffer more interruption, than he would in a regulated society. Hence the universal introduction of governments of some kind or other into the social state. The liberty of every member is increased by this introduction; for each gains more by the limitation of the freedom of every other member, than he loses by the limitation of his own. The result is, that civil government is necessary to the perfection and happiness of man. In forming this



government, and carrying it into execution, it is essential that the interest and authority of the whole community should be binding on every part of it.

The foregoing principles and conclusions are generally admitted to be just and sound with regard to the nature and formation of single governments, and the duty of submission to them. In some cases they will apply, with much propriety and force, to States already formed. The advantages and necessity of civil government among individuals in society are not greater or stronger than, in some situations and circumstances, are the advantages and necessity of a federal government among States. A natural and a very important question now presents itself. Is such the situation—are such the circumstances of the United States? A proper answer to this question will unfold some very interesting truths.

The United States may adopt any one of four different systems. They may become consolidated into one government, in which the separate existence of the States shall be entirely absorbed. They may reject any plan of union or association, and act as separate and unconnected States. They may form two or more confederacies. They may unite in one federal republic. Which of these systems ought to have been proposed by the convention? To support with vigor, a single government over the whole extent of the United States, would demand a system of the most unqualified and the most unremitted despotism. Such a number of separate States, contiguous in situation, unconnected and disunited in government, would be, at one time, the prey of foreign force, foreign influence, and foreign intrigue; at another, the victim of mutual rage, rancor, and revenge. Neither of these systems found advocates in the late convention: I presume they will not find advocates in this. Would it be proper to divide the United States into two or more confederacies? It will not be unadvisable to take a more minute survey of this subject. Some aspects, under which it may be viewed, are far from being, at first sight, uninviting. Two or more confederacies would be each more compact and more manageable, than a single one extending over the same territory. By dividing the United States into two or more confederacies, the great collision of interests, apparently or really different and contrary, in the whole extent of their dominion, would be broken, and in a great measure disappear in the several parts. But these advantages, which are discovered from certain points of view, are greatly overbalanced by inconveniences that will appear on a more accurate examination. Animositities, and perhaps wars, would arise from assigning the extent, the limits, and the rights of the different confederacies. The expenses of governing would be multiplied by the number of federal governments. The danger resulting from foreign influence and mutual dissensions would not, perhaps, be less great and alarming in the instance

of different confederacies, than in the instance of different, though more numerous unassociated States. These observations, and many others that might be made on the subject, will be sufficient to evince, that a division of the United States into a number of separate confederacies, would probably be an unsatisfactory and an unsuccessful experiment. The remaining system, which the American States may adopt, is a union of them under one confederate republic. It will not be necessary to employ much time or many arguments to show, that this is the most eligible system that can be proposed. By adopting this system, the vigor and decision of a wide-spreading monarchy may be joined to the freedom and beneficence of a contracted republic. The extent of territory, the diversity of climate and soil, the number, and greatness, and connection of lakes and rivers, with which the United States are intersected and almost surrounded, all indicate an enlarged government to be fit and advantageous for them. The principles and dispositions of their citizens indicate, that in this government liberty shall reign triumphant. Such indeed have been the general opinions and wishes entertained since the era of our independence. If those opinions and wishes are as well founded as they have been general, the late convention were justified in proposing to their constituents one confederate republic, as the best system of a national government for the United States.

In forming this system, it was proper to give minute attention to the interests of all the parts; but there was a duty of still higher import—to feel and to show a predominating regard to the superior interests of the whole. If this great principle had not prevailed, the plan before us would never have made its appearance. The same principle that was so necessary in forming it, is equally necessary in our deliberations, whether we should reject or ratify it.

I make these observations with a design to prove and illustrate this great and important truth—that in our decisions on the work of the late convention, we should not limit our views and regards to the State of Pennsylvania. The aim of the convention was, to form a system of good and efficient government on the more extensive scale of the United States. In this, as in every other instance, the work should be judged with the same spirit with which it was performed. A principle of duty as well as of candor demands this.

We have remarked, that civil government is necessary to the perfection of society: we now remark, that civil liberty is necessary to the perfection of civil government. Civil liberty is natural liberty itself, divested only of that part which, placed in the government, produces more good and happiness to the community, than if it had remained in the individual. Hence it follows, that civil liberty, while it resigns a part of natural liberty, retains the free



and generous exercise of all the human faculties, so far as it is compatible with the public welfare.

In considering and developing the nature and end of the system before us, it is necessary to mention another kind of liberty, which has not yet, as far as I know, received a name. I shall distinguish it by the appellation of federal liberty. When a single government is instituted, the individuals of which it is composed surrender to it a part of their natural independence, which they before enjoyed as men. When a confederate republic is instituted, the communities of which it is composed surrender to it a part of their political independence, which they before enjoyed as States. The principles which directed, in the former case, what part of the natural liberty of the man ought to be given up, and what part ought to be retained, will give similar directions in the latter case. The States should resign to the national government that part, and that part only, of their political liberty, which, placed in that government, will produce more good to the whole, than if it had remained in the several States. While they resign this part of their political liberty, they retain the free and generous exercise of all their other faculties as States, so far as it is compatible with the welfare of the general and superintending confederacy.

Since States as well as citizens are represented in the constitution before us, and form the objects on which that constitution is proposed to operate, it was necessary to notice and define federal as well as civil liberty.

These general reflections have been made in order to introduce, with more propriety and advantage, a practical illustration of the end proposed to be accomplished by the late convention.

It has been too well known—it has been too severely felt—that the present confederation is inadequate to the government and to the exigencies of the United States. The great struggle for liberty in this country, should it be unsuccessful, will probably be the last one which she will have for her existence and prosperity, in any part of the globe. And it must be confessed, that this struggle has, in some of the stages of its progress, been attended with symptoms that foreboded no fortunate issue. To the iron hand of tyranny, which was lifted up against her, she manifested, indeed, an intrepid superiority. She broke in pieces the fetters which were forged for her, and showed that she was unassailable by force. But she was environed by dangers of another kind, and springing from a very different source. While she kept her eye steadily fixed on the efforts of oppression, licentiousness was secretly undermining the rock on which she stood.

Need I call to your remembrance the contrasted scenes, of which we have been witnesses? On the glorious conclusion of our conflict with Britain, what high expectations were formed concerning us by others! What high

expectations did we form concerning ourselves! Have those expectations been realized? No. What has been the cause? Did our citizens lose their perseverance and magnanimity? No. Did they become insensible of resentment and indignation, at any high-handed attempt that might have been made to injure or enslave them? No. What then has been the cause? The truth is, we dreaded danger only on one side: this we manfully repelled. But on another side, danger, not less formidable, but more insidious, stole in upon us; and our unsuspecting tempers were not sufficiently attentive, either to its approach or to its operations. Those whom foreign strength could not overpower, have well nigh become the victims of internal anarchy.

If we become a little more particular, we shall find that the foregoing representation is by no means exaggerated. When we had baffled all the menaces of foreign power, we neglected to establish among ourselves a government that would ensure domestic vigor and stability. What was the consequence? The commencement of peace was the commencement of every disgrace and distress that could befall a people in a peaceful state. Devoid of national power, we could not prohibit the extravagance of our importations, nor could we derive a revenue from their excess. Devoid of national importance, we could not procure for our exports a tolerable sale at foreign markets. Devoid of national credit, we saw our public securities melt in the hands of the holders, like snow before the sun. Devoid of national dignity, we could not, in some instances, perform our treaties on our part; and, in other instances, we could neither obtain nor compel the performance of them on the part of others. Devoid of national energy, we could not carry into execution our own resolutions, decisions, or laws.

Shall I become more particular still? The tedious detail would disgust me: nor is it now necessary. The years of languor are past. We have felt the dishonor with which we have been covered: we have seen the destruction with which we have been threatened. We have penetrated to the causes of both, and when we have once discovered them, we have begun to search for the means of removing them. For the confirmation of these remarks, I need not appeal to an enumeration of facts. The proceedings of Congress, and of the several States, are replete with them. They all point out the weakness and insufficiency of the present confederation as the cause, and an efficient general government as the only cure of our political distempers.

Under these impressions, and with these views, was the late convention appointed; and under these impressions and with these views, the late convention met.

We now see the great end which they proposed to accomplish. It was to frame, for the consideration of their constituents, one federal and national constitution—a constitution that

would produce the advantages of good, and prevent the inconveniences of bad government—a constitution, whose beneficence and energy would pervade the whole Union, and bind and embrace the interests of every part—a constitution that would ensure peace, freedom, and happiness, to the States and people of America.

We are now naturally led to examine the means by which they proposed to accomplish this end. This opens more particularly to our view the important discussion before us. But previously to our entering upon it, it will not be improper to state some general and leading principles of government, which will receive particular applications in the course of our investigations.

There necessarily exists in every government a power, from which there is no appeal; and which, for that reason, may be termed supreme, absolute, and uncontrollable. Where does this power reside? To this question, writers on different governments will give different answers. Sir William Blackstone will tell you, that in Britain the power is lodged in the British Parliament; that the Parliament may alter the form of the government; and that its power is absolute and without control. The idea of a constitution, limiting and superintending the operations of legislative authority, seems not to have been accurately understood in Britain. There are, at least, no traces of practice conformable to such a principle. The British constitution is just what the British Parliament pleases. When the Parliament transferred legislative authority to Henry the Eighth, the act transferring it could not, in the strict acceptance of the term, be called unconstitutional.

To control the power and conduct of the legislature by an overruling constitution, was an improvement in the science and practice of government reserved to the American States.

Perhaps some politician, who has not considered with sufficient accuracy our political systems, would answer, that, in our governments, the supreme power is vested in the constitutions. This opinion approaches a step nearer to the truth, but does not reach it. The truth is, that, in our governments, the supreme, absolute, and uncontrollable power remains in the people. As our constitutions are superior to our legislatures, so the people are superior to our constitutions. Indeed, the superiority in this last instance is much greater; for the people possess, over our constitutions, control in act as well as in right.

The consequence is, that the people may change the constitutions whenever and however they please. This is a right, of which no positive institution can ever deprive them.

These important truths, sir, are far from being merely speculative; we, at this moment, speak and deliberate under their immediate and benign influence. To the operation of these truths we are to ascribe the scene, hitherto unparalleled, which America now exhibits to the

world—a gentle, a peaceful, a voluntary, and a deliberate transition from one constitution of government to another. In other parts of the world the idea of revolutions in governments is, by a mournful and indissoluble association, connected with the idea of wars, and all the calamities attendant on wars. But happy experience teaches us to view such revolutions in a very different light—to consider them only as progressive steps in improving the knowledge of government, and increasing the happiness of society and mankind.

Oft have I viewed with silent pleasure and admiration the force and prevalence, through the United States, of this principle—that the supreme power resides in the people, and that they never part with it. It may be called the panacea in politics. There can be no disorder in the community but may here receive a radical cure. If the error be in the legislature, it may be corrected by the constitution; if in the constitution, it may be corrected by the people. There is a remedy, therefore, for every distemper in government, if the people are not wanting to themselves. For a people wanting to themselves, there is no remedy: from their power, as we have seen, there is no appeal: to their error, there is no superior principle of correction.

There are three simple species of government—monarchy, where the supreme power is in a single person—aristocracy, where the supreme power is in a select assembly, the members of which either fill up, by election, the vacancies in their own body, or succeed to their places in it by inheritance, property, or in respect of some personal right or qualification—a republic or democracy, where the people at large retain the supreme power, and act either collectively or by representation. Each of these species of government has its advantages and disadvantages.

The advantages of a monarchy are—strength, despatch, secrecy, unity of counsel. Its disadvantages are—tyranny, expense, ignorance of the situation and wants of the people, insecurity, unnecessary wars, evils attending elections or successions.

The advantage of aristocracy is wisdom, arising from experience and education. Its disadvantages are—dissensions among themselves, oppression to the lower orders.

The advantages of democracy are—liberty, equal, cautious, and salutary laws, public spirit, frugality, peace, opportunities of exciting and producing the abilities of the best citizens. Its disadvantages are—dissensions, the delay and disclosure of public counsels, the imbecility of public measures retarded by the necessity of a numerous consent.

A government may be composed of two or more of the simple forms above mentioned. Such is the British government. It would be an improper government for the United States, because it is inadequate to such an extent of territory; and because it is suited to an estab-

lishment of different orders of men. A more minute comparison between some parts of the British constitution and some parts of the plan before us, may, perhaps, find a proper place in a subsequent period of our business.

What is the nature and kind of that government which has been proposed for the United States by the late convention? In its principle it is purely democratical; but that principle is applied in different forms, in order to obtain the advantages and exclude the inconveniences of the simple modes of government.

If we take an extended and accurate view of

it, we shall find the streams of power running in different directions, in different dimensions, and at different heights, watering, adorning, and fertilizing the fields and meadows, through which their courses are led; but if we trace them, we shall discover that they all originally flow from one abundant fountain. In this constitution, all authority is derived from ~~THE~~ PEOPLE.

Fit occasions will hereafter offer for particular remarks on the different parts of the plan. I have now to ask pardon of the House for detaining them so long.

## WILLIAM LIVINGSTON.

ROBERT, the first of the Livingston family who came to America, was the son of John Livingston, a clergyman, and was born on the thirteenth of December, 1654, at Ancram, a small village on the Teviot, in Roxburghshire, Scotland. The precise date of his arrival in America is unknown, but it is certain he was in the province of New York as early as 1676, as the public records show that he was Secretary to the Commissaries, who at that time superintended the affairs of "Albany, Schenectade, and the parts adjacent." He held this secretaryship until July, 1686, during which time he acquired the original grant of land known as the Manor and Lordship of Livingston, which was the foundation of the subsequent wealth of himself and his family. About 1679, Mr. Livingston married Alida, the widow of Nicholas Van Renselaer, and sister of Peter Schuyler, by whom he had several children. Philip, his second son, was born at Albany in the year 1686, and owing to the death of his elder brother, he succeeded to the manorial estate. Little is known of his career. He resided a considerable time in the city of his birth, and was at one period connected with its municipal government. He was a member of the Assembly, and occupied other positions of honor and trust in the province.

William Livingston, the fifth child of Philip and Catherine Van Brugh Livingston, was born at Albany, New York, in the month of November, 1723. At the age of fourteen years he left his home and entered the Freshman class of Yale College. On graduating, in 1741, he immediately went to New York and commenced the study of law in the office of James Alexander, a Scotch gentleman, and a lawyer of great ability.\* In this position Mr. Livingston displayed great energy and application; devoting the day to the "dry business of the law" at the desk of his instructor, and the evening to the study of mathematics and the acquirement of general knowledge. He also contributed several essays to the newspapers while a student in the office of Mr. Alexander—the first of which appeared in Parker's New York Weekly Post Boy, for the nineteenth of August, 1745, under the signature *Tyro Philolegis*. In this he denounced the method of studying law. "There is perhaps no set of men," says he, "that bear so ill a character in the estimation of the vulgar, as the gentlemen of the long robe. Whether the disadvantageous idea they commonly entertain of their integrity be founded upon solid reasons, is not my design to inquire into; but if they deserve the imputation of injustice and dishonesty, it is in no instance more visible and notorious, than in their conduct towards their apprentices. That a young fellow should be bound to an attorney for four, six or seven years, to serve him part of the time for the consideration that his master shall instruct in the mystery of the law the remainder of the term; and that notwithstanding this solemn compact, which if binding on either side is reciprocally obligatory, the attorney shall either employ him in writing during the

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\* Mr. Alexander came to America in 1715. He was secretary of the province of New York, and through the kind offices of Governor Burnet, in whose estimation he ranked high, he was appointed a member of his council, in which position he remained several years. Smith, the early historian of New York, says of him: "He was a man of learning, good morals, and solid parts. He was bred to the law, and though no speaker, at the head of his profession for sagacity and penetration; and in application to business no man could surpass him. Nor was he unacquainted with the affairs of the public, having served in the secretary's office, the best school in the province for instruction in matters of government." He died early in the year 1756.—*Smith's New York, Ed. 1757, page 152.*

whole term of his apprenticeship, or if he allows him a small portion of the time for reading, shall leave him to pore on a book without any instruction to smooth and facilitate his progress in his study, or the least examination of what proficiency he makes in that perplexed science; is an outrage upon common honesty, a conduct scandalous, horrid, base and infamous to the last degree!" He continues his essay in this manner, exposing the drudgery to which lawyers' clerks were subjected at that time, and calling upon the "gentlemen of the long robe" to abolish a custom which was equally injurious to themselves and their pupils. In the spring of the next year another piece appeared in the same paper, on *Pride arising from Riches and Prosperity*. A misunderstanding arose between Mr. Livingston and his law-teacher in reference to the authorship and intent of this production,\* the result of which was that Mr. Livingston left the office of his instructor, and entered that of Mr. William Smith, then a lawyer of some eminence.†

About this time, while yet a student, Mr. Livingston married and established his residence in New York. In 1747 he published a poem entitled *Philosophic Solitude, or the Choice of a Rural Life*. This was one of the first of his poetical productions. As to its merits, an able critic says, "though it has not high poetic value, it displays the tastes of a scholar, and the virtues of an upright mind."‡ Mr. Livingston completed his studies, and was admitted to practice as an attorney in the fall of the year 1748. In 1752 he was associated with William Smith, Junior,§ in the publication of the first digest of the colonial laws, a second volume of which appeared from the hands of the same persons ten years afterwards. From this work the only immediate advantage Mr. Livingston derived, was that of being brought into notice; his practice, however, soon began to increase, and he rose to a conspicuous place at the bar. The same year (1752) he commenced the publication of the *Independent Reflector*, the first number of which appeared on the thirtieth of November. This periodical devoted itself to "a close and impartial scrutiny of the existing establishments, and pursuing its course without fear or favor, had for its object the exposure of official abuse, negligence and corruption in whatever rank they were to be found." It engaged ardently in the discussion relative to the religious government of Kings, now Columbia College, and exposed the injustice and impropriety of making that institution sectarian. So strong was the opposition to this journal, its editor "defamed in private society and denounced from the pulpit," it was discontinued on the twenty-second of November, 1753, after the publication of the fifty-second number.¶ Early in the year 1754, Mr. Livingston, in company with several other influential and educated gentlemen, laid the foundation of the Society Library of the city of New York.‖ In November of the same year, appeared the first number of the *Watch Tower*, another series of essays on the sub-

\* The origin of this misunderstanding is said to have been as follows: A Mr. Rice, organist of Trinity church, forgetful of the strongly-marked distinctions which then practically established what has in later days been termed the "Theory of Ranks," presumed to send a valentine, viz., a pair of gloves, with a copy of verses emblematic and expressive of his devotion to Miss Alexander. The fashionable young beauty and her mother resented it as an insult, and their conduct struck the more republican mind of young Livingston as so unreasonable, that, unmindful of the relation in which he stood to the lady's father, the pasquinade already spoken of was the result.—*Sedgwick's Life of Livingston*. *Parker's New York Post-Boy*, of March 3d, 1746.

† William Smith held a very prominent position on the liberal side of colonial politics; became a member of his majesty's council, and was afterwards appointed judge of the Court of King's Bench. He was the father of the colonial historian of New York.

‡ *American Quarterly Review*, No. 4, page 506. *Sedgwick's Life of Livingston*, page 62.

§ William Smith, Jr. was born at New York, on the twenty-fifth of June, 1728. He graduated at Yale College at a very early age, and commenced the study of law at New York. As early as 1769 he was appointed a member of his majesty's council, where his attendance was regular, his integrity unquestioned, and his loyalty firm to his king. On the occasion of the Stamp Act troubles, Mr. Smith proposed a plan of union of all the colonies, which was submitted to and approved by the minister, George Grenville; but through delay the plan was never carried out. He prepared a history of the province of New York, from the first discovery to the year 1782, which was published in 1757. On the evacuation of New York by the British in 1783, Mr. Smith went to England, where he remained until he was appointed Chief Justice of Canada, in 1786. This office he held until his death, which took place on the third of December, 1793.

¶ A complete file of this early periodical is in the library of the New York Historical Society.

‖ In *Gaine's New York Mercury*, of May 14th, 1759, we find the following: "The trustees of the New York Society Library have ordered the librarian to give his attendance every Monday and Thursday, from half an hour after eleven to one o'clock. The subscribers are desired to send their annual subscription to the treasurer."

ject of King's College, written principally by Mr. Livingston, and in the course of the few following years he contributed largely to the occasional literature of the country. In 1758 he was elected to the Assembly of the Colony of New York, in which body he remained two years.

The first of a series of papers entitled *The Sentinel*, treating of the general and prominent subjects of the day, appeared in the New York Gazette, on the twenty-eighth of February, 1765. These papers are written with much spirit and ability, and it is probable that a greater portion of them emanated from the pen of Mr. Livingston. The most curious and characteristic of these is entitled *A New Sermon to an Old Text*, which forms the twenty-first number of the series. The text is, "*Touch not mine anointed.*" After showing how often the text had been misunderstood and misconstrued by previous commentators, in favor of kings rather than the people, he demonstrates in what "touching" the anointed consists. "*The Lord's anointed*, that is, the *people*," says he, "are very sensibly touched when they have penalties inflicted on them merely for their religious principles or worship. By entering into society men never intended, nor could intend, to make their religion a matter of civil cognizance. For religion being a prevailing disposition of the soul to universal holiness, it can neither be increased nor lessened by any political laws. And civil society, being contrived for the preservation of men's lives and properties, it can neither be injured or benefited by any man's religion. Besides, how can any person, with the least color of reason, pretend that I have a right to judge for myself, and yet punish me for using it?—that is, for doing what he acknowledged I had a right to do. To plead for it, would be a contradiction in terms. Hence, every species of persecution, whether under color of law or by open violence, is evidently *touching* the people, or, in other words, *the Lord's anointed*."

"All those wretched nations who live under absolute governments, and are stripped of the natural rights of mankind by their unrelenting oppressors, are most miserably *touched*. Tyranny, my brethren, is a kind of political damnation; and were all the enemies of human happiness to consult together for a whole century, they could not invent a more effectual method to destroy it, than by enslaving a free people. Turn your eyes to those parts of the globe where liberty is no more, and what do you behold but nakedness, beggary and want! The lords of the creation used like the bestial herd; and a single tyrant rioting in the spoils of thousands!

"A free people may be said to be *touched*, whenever any of those laws by which their civil rights are secured to them are in any degree infringed or violated. The law, my brethren, is the foundation of our liberties. Take away this, and the superstructure tumbles to the ground. How acutely, therefore, do they *touch the Lord's anointed*, who would raze this glorious foundation, and in its room erect the enormous Babel of despotic pleasure!

"Whenever any man declares that Englishmen have no other title to their liberty than the will of their prince, he may be said most severely to *touch the people* and deserves to be severely reprov'd for his impudence. Blessed be God, we do not hold our liberties by the precarious tenure of any man's will. They are defended by the impregnable bulwark of law, and guaranteed by the most awful sanctions. And whoever asserts the contrary is a *liar*, and the *truth is not in him*."\*

The next important production of Mr. Livingston was the celebrated letter to the Bishop of Llandaff,† refuting the charges made by that prelate against the early colonists of America, in a sermon preached before the Society for the Propagation of the Gospel. It was one of the most spirited of the numerous pamphlets that appeared at that time, touching upon the proposed establishment of an Episcopate in America. Upon its republication in London, it attracted much attention, and drew forth the opposition, in pamphlets and parodies. In 1770, Mr. Livingston published the satire upon Lieutenant Governor Colden, entitled *A Soliloquy*, in which he was unusually severe upon that gentleman. In the fall of the same year he was

\* New York Gazette, July 18th, 1765.—The last number of the *Sentinel* was published on the 29th August, 1765.

† The title of this work is, "A Letter to the Right Reverend Father in God John, Lord Bishop of Llandaff, occasioned by some passages in his Lordship's sermon, on the 20th of February, 1767, in which the American Colonies are loaded with great and undeserved reproach."

elected president of *The Moot*, a club organized by the principal lawyers of New York city, for the discussion of legal questions and other points pertaining to the law. In May, 1772, he removed to the village of Elizabethtown, New Jersey, and in the fall of the next year retired to his country seat, afterwards known by the significant title of *Liberty Hall*. But he did not long remain in this retirement. The revolutionary difficulties were assuming a more threatening aspect, and he was called upon to enter upon that which proved "the most arduous and the most honorable" portion of his life. In 1774, he was chosen a delegate to the Continental Congress, and remained in that body until the fifth of June, 1776, when he was called to take command of the New Jersey militia. His career in the Congress was consistent and effective: and in the discharge of the duties assigned to him, he increased his already high and honorable reputation.

On the thirty-first of August of the same year (1776), the first republican legislature of New Jersey elected Mr. Livingston to the office of Governor of that State; on which he resigned his command in the militia and repaired to Princeton, where he was inaugurated on the seventh of September. In his inaugural address delivered before the legislative assemblies, a week afterwards, he says: "Let us, gentlemen, both by precept and practice, encourage a spirit of economy, industry and patriotism, and that public integrity which cannot fail to exalt a nation: setting our faces at the same time *like a flint*\* against that dissoluteness of manners and political corruption which will ever be the reproach of any people. May the foundation of our infant State be laid in virtue and the fear of God, and the superstructure will rise glorious, and endure for ages. Then may we humbly expect the blessing of the Most High, who divides to the nations their inheritance, and separates the sons of Adam. In fine, gentlemen, while we are applauded by the whole world for demolishing the old fabric, rotten and ruinous as it was, let us unitedly strive to approve ourselves master builders, by giving beauty, strength and stability to the new." In this speech, Governor Livingston displays that inflexibility yet simplicity of character for which he was eminently celebrated, both in public and private life.

While in the office of governor, he contributed several essays to the *New Jersey Gazette*, under the signature of *Hortentius*. These essays contributed much towards strengthening the hearts and nerving the arms of the Americans, who were in doubt as to the ultimate success of Great Britain. Their wit and sarcasm amused, while their sturdy independence and logical eloquence convinced, the doubting patriots. One of the most characteristic of these productions is *On the Conquest of America*.† "It is observable," says the writer, "that at the opening of every campaign in the spring, the British plunderers and their Tory emissaries announce the total reduction of America before the winter. In the fall they find themselves as remote from their purpose as they are in the spring: and then we are threatened with innumerable hosts from Russia and Germany, who will utterly extirpate us the ensuing summer, or reduce us to the most abject submission. They have so beat this beaten track, that for the mere sake of variety, I would advise them to explore a new road; and not compel us to nauseate a falsehood, not only because we know it to be one, but for its perpetual repetition without the least variation or alternity. According to custom, therefore, the new lie (that is the old lie reiterated) for the next summer is, that we are to be devoured bones and all, by thirty-six thousand Russians; besides something or other that is to be done to us by the King of Prussia. What this is to be is still a profound secret; but as it will doubtless be something very extraordinary, and it being impossible to conceive what else he can do to us, after we are swallowed by the Russians, he is probably, by some political emetic or other, to bring us up again. I should think, in common complaisance to human reason, that absurdities so gross, and figments so destitute of probability, would only deceive those who choose to be deceived. The Empress of Russia, though a sovereign in petticoats, knows too well that the true riches of a nation consist in the number of its inhabitants, to suffer such a number of her subjects to be knocked on the head in America, for the sake of facilitating the fanatic project of a more southern potentate in breeches, deluded by a blundering

\* From this expression, and from his "inflexible impartiality," Governor Livingston was for some time after familiarly known among the people of his State by the name of "Dr. Flint."—*Sedgwick*, page 207.

† This essay was published in the *New Jersey Gazette*, of December 24th, 1777, in the fourth number of that paper.

ministry, and the universal derision of Europe. It is her interest (and I shall wonder if ever princes proceed upon any other principle, before the commencement of the millennium) to have America dismembered from Great Britain, which must of necessity reduce the naval power of the latter, and make Russia a full match for her on the ocean. And as for the King of Prussia, considering that there never was any love lost between him and the family of Brunswick, and that he has long been jealous of the maritime strength of Britain, these artificers of fraud might with equal plausibility, have introduced the Emperor of Japan, as entering into leagues and alliances with our late master at St. James'. It is nothing but an impudent forgery from first to last, and merely fabricated to restore to their natural shape and features the crest-fallen countenances of the tories, and if possible to intimidate the genuine sons of America. The utmost they can do they have already done; and are this moment as far from any prospect of subjecting us to the dominion of Britain, as they were in the ridiculous hour in which General Gage first arrived at Boston. This is no secret with those who have the management of their armies in America, how greatly soever the nation itself may be deluded by the pompous accounts of their progress. But whatever becomes of Old England at least, these gentlemen are sure of accumulating immense wealth during the war; and are therefore determined to keep up the delusion as long as possible. *Burgoyne* is the only one of any distinction, who has virtue enough to own the truth; and I am credibly informed, that he has frankly declared—that he was most egregiously deceived in the Americans,—that he had been led to believe they would never come to bayoneting,—that they had behaved with the greatest intrepidity in attacking intrenchments,—that although a regiment of his grenadiers and light-infantry displayed, in an engagement with Colonel Morgan's battalion of riflemen, the most astonishing gallantry, Morgan exceeded them in dexterity and generalship,—and that it was utterly impossible ever to conquer America." Under the signature *Hortentius*, Governor Livingston contributed to the *United States Magazine*, in 1779; but ascertaining that several members of the legislature had expressed "their dissatisfaction that the chief magistrate of the State should contribute to the periodicals, he discontinued his communications altogether, and appears to have written nothing for the press for several years."

The prominent position occupied by Governor Livingston, in the ranks of the patriots, coupled with the odium he had incurred by his various literary productions, issued in ridicule and defiance of the ministry and their adherents, subjected him to continual danger. Several attempts were made by the British to take him prisoner, and large bounties were offered by those in authority, for his apprehension. In one of his letters, written in 1778, he says, in noticing this state of affairs: "They certainly overrate my merit, and I cannot conceive what induces them to bid so extravagant a sum, having now raised my price from five hundred to two thousand guineas, unless it be that General Skinner intends to pay his master's debts, as he has long been used to pay his own."\* Unsuccessful in these attempts upon the liberty and life of Governor Livingston, the ministerial press heaped their abuse upon him; hardly a sheet appearing from that source without some vilification of his public or private life. Livingston's *Royal Gazette*, the organ of the ministerial party in New York city, was particularly violent and revengeful. By this paper he was designated as, "*The Titular Governor of the Jerseys*,"—" *Spurious Governor*,"—" *Don Quixote of the Jerseys*,"—" *Knight of the Most Honorable Order of Starvation*, and *Chief of the Independents*;" and in *A Dream*, published in the issue of the twenty-third of

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\* The following is an account of one of the numerous attempts made to capture Governor Livingston, and shows to what a degree party malice was carried at that time. It is taken from the *New Jersey Gazette*, of July 28th, 1779:—"A number of villains in the vicinity of Persimpeny, Morris county, having for some days before been suspected of being concerned in a conspiracy to take or assassinate Governor Livingston, as soon as he should return from the General Assembly, a son of the governor's having previously induced one of the persons suspected to believe that his excellency was looked for on the 22d ult., caused a report to be propagated towards the evening of that day, that he was actually returned. As the young gentleman expected that the conspirators would, in consequence of the report, attack the house that night, he had concerted proper measures for their reception. Accordingly, about two o'clock the next morning, the ruffians were discovered within fifty yards of the governor's house; but being fired upon by one of our patrols, they instantly took into the woods and fled. The person, however, who was suspected to be at the head of the gang, and who had for some time past taken up his residence in that neighborhood to facilitate the conspiracy, disappearing the next morning, was pursued and taken. He is committed to jail in Morristown, and has already made considerable discoveries. It is supposed that



January, 1779, in which several of the more prominent "*rebels*" pass in review, appears "the black soul of LIVINGSTON, which was 'fit for treason, sacrilege and spoil,' and polluted with every species of murder and iniquity, was condemned to *howl* in the body of a *wolf*;' and I beheld with surprise, that he retained the same *gaunt, hollow and furious* appearance, and that his tongue still continued to be red with human gore. Just at this time Mercury touched me with his wand, and thereby bestowed an insight into futurity, when I saw this very wolf hung up at the door of his fold, by a shepherd whose innocent flock had been from time to time thinned by the murdering jaws of this savage animal." These scurrilous publications continued throughout the war, but the governor suffered nothing from such abuse and criticism.

The services of Governor Livingston were of great value during the Revolution. His correspondence with the principal men of that time evinces the high estimation in which he was held: especially the letters of Washington, which exhibit the utmost regard and confidence in his patriotism and abilities. "Your Excellency," says he, "will be sensible how much the honor and interest of these States must be concerned in a vigorous co-operation, should the event I have supposed happen, and I shall place the fullest confidence in that wisdom and energy of which your Excellency's conduct has afforded such frequent and decisive proofs.\*"

In January of the year 1781, Governor Livingston was chosen, at the first annual election of the American Philosophical Society, a councillor of that body; and the next year he became a member of the American Academy of Arts and Sciences, at Cambridge, Mass. On the arrival of the news of peace, he returned to "Liberty Hall," and once more entered upon the superintendence of his home, from which he had been absent for the greater part of the war. His joy at being thus finally allowed to relinquish his wandering life, and in being permanently joined to his wife and children, overflows in his letters written about this time. "Thanks to Heaven," says he, "that the times again permit me to pursue my favorite amusement of raising vegetables; which, with the additional pleasure resulting from my library, I really prefer to all the bustle and splendor of the world."† In June, 1785, he was elected by Congress to succeed Mr. Adams at the Court of Holland; but this office he declined on account of his advancing age, "and by the fear of being thought indifferent to the affectionate confidence so many years reposed in him by the State of New Jersey." About the same time he was chosen an honorary member of the Association for the Promotion of Agriculture, of Philadelphia, and in October of the same year (1785) he was re-elected to the office of governor. On the ninth of January, 1786, the first of another series of essays appeared in the New Jersey Gazette, under the title of *The Primitive Whig*. These were contributed by Governor Livingston, and are written with force and ability. In 1787 he was appointed a delegate to the Federal Convention. "Mr. Livingston did not take his seat in the Convention," says Mr. Madison, "till some progress had been made in the task committed to it, and he did not take any active part in the debates; but he was placed on important committees, where it may be presumed he had an agency and a due influence. He was personally unknown to many, perhaps most of the members, but there was a predisposition in all to manifest the respect due to the celebrity of his name."

In the fall of the year 1789, Mr. Livingston was elected Governor of the State for the last time. He had held that position uninterruptedly since his election under the first republican constitution of 1776. On the twenty-fifth of the June following, (1790,) he died, respected, honored and beloved.

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some, if not all of those villains, are employed by a much greater villain than any of them, even the worshipful David Mathews, Esq., military Mayor of the City of New York, concerning whom one James Allen, lately apprehended for robbery, declared upon his examination, "that he was present when the said mayor desired *Mason* to endeavor to burn Governor Clinton's house in the course of the summer; that the mayor gave him a description of its situation, and who lived in it; that *Mason* replied, 'he should have a little patience and it should be effected.' That the mayor told *Mason*, *Ward*, *Everet*, and *Harding*, four of his fellow-robbers, (that is, either Mr. Allen's or Mr. Mayor's, as the reader pleases,) that it was a pity they could not lay some plot, and bring that rascal Governor Livingston. They replied that they had planned matters so in that quarter, that they would have him in less than two months; and that they had proper connections in that quarter for that purpose."

\* MS. letter in N. J. State Library: Sedgwick's Life of Livingston, page 263.

† Sedgwick's Life of Livingston, page 378.

## SPEECH TO THE NEW JERSEY LEGISLATURE.

The British soldiery in their march through New Jersey in 1776, committed the most brutal outrages upon the inhabitants of that State. They wantonly destroyed the property they could not carry away, and spread desolation wherever they went. At the same time a spirit of disaffection manifested itself in that colony, arising partly from the irregular state of the militia, who, from the inefficiency and bad example of their officers, were allowed to plunder many of the inhabitants on pretence of their being Tories; and partly from a fondness for the British constitution, and an idea that Great Britain was irresistible and would finally conquer. The following speech, treating of these affairs, was delivered to the New Jersey Assembly on the twenty-eighth of February, 1777:

GENTLEMEN: Having already laid before the Assembly, by messages, the several matters that have occurred to me, as more particularly demanding their attention, during the present session, it may seem less necessary to address you in the more ceremonious form of a speech. But, conceiving it my duty to the State, to deliver my sentiments on the present situation of affairs, and the eventful contest between Great Britain and America, which could not, with any propriety, be conveyed in occasional messages, you will excuse my giving you the trouble of attending for that purpose.

After deploring with you the desolation spread through this State, by an unrelenting enemy who have, indeed, marked their progress with a devastation unknown to civilized nations, and evince of the most implacable vengeance, I heartily congratulate you upon that subsequent series of success, wherewith it hath pleased the Almighty to crown the American arms; and particularly on the important enterprise against the enemy at Trenton and the signal victory obtained over them at Princeton, by the gallant troops under the command of his Excellency General Washington. Considering the contemptible figure they make at present, and the disgust they have given to many of their own confederates amongst us, by their more than Gothic ravages, (for thus doth the great Disposer of events often deduce good out of evil,) their irruption into our dominion will probably redound to the public benefit. It has certainly enabled us the more effectually to distinguish our friends from our enemies. It has winnowed the chaff from the grain. It has discriminated the temporizing politician, who, at the first appearance of danger, was determined to secure his idol, property, at the hazard of the general weal, from the

persevering patriot, who, having embarked his all in the common cause, chooses rather to risk, rather to lose that all, for the preservation of the more estimable treasure, liberty, than to possess it, (enjoy it he certainly could not,) upon the ignominious terms of tamely resigning his country and posterity to perpetual servitude. It has, in a word, opened the eyes of those who were made to believe that their impious merit, in abetting our persecutors, would exempt them from being involved in the general calamity. But as the rapacity of the enemy was boundless, their havoc was indiscriminate, and their barbarity unparalleled. They have plundered friends and foes. Effects, capable of division, they have divided. Such as were not, they have destroyed. They have warred upon decrepit age; warred upon defenceless youth. They have committed hostilities against the professors of literature, and the ministers of religion; against public records and private monuments, and books of improvement, and papers of curiosity, and against the arts and sciences. They have butchered the wounded, asking for quarter; mangled the dying, weltering in their blood; refused to the dead the rites of sepulture; suffered prisoners to perish for want of sustenance; violated the chastity of women; disfigured private dwellings of taste and elegance; and, in the rage of impiety and barbarism, profaned and prostrated edifices dedicated to Almighty God.

And yet there are amongst us, who, either from ambitious or lucrative motives, or intimidated by the terror of their arms, or from a partial fondness for the British constitution, or deluded by insidious propositions, are secretly abetting, or openly aiding their machinations to deprive us of that liberty, without which man is a beast, and government a curse.

Besides the inexpressible baseness of wishing to rise on the ruins of our country, or to acquire riches at the expense of the liberties and fortunes of millions of our fellow-citizens, how soon would these delusive dreams, upon the conquest of America, end in disappointment? For where is the fund to recompense those retainers to the British army? Was every estate in America to be confiscated, and converted into cash, the product would not satiate the avidity of their national dependants, nor furnish an adequate repast for the keen appetites of their own ministerial beneficiaries. Instead of gratuities and promotion, these unhappy accomplices in their tyranny, would meet with supercilious looks and cold disdain; and, after tedious attendance, be finally told by their haughty masters, that they, indeed approved the treason, but despised the traitor. Insulted, in fine, by their pretended protectors, but real betrayers, and goaded with the stings of their own consciences, they would remain the fright-

ful monuments of contempt and divine indignation, and linger out the rest of their days in self-condemnation and remorse; and, in weeping over the ruins of their country, which themselves had been instrumental in reducing to desolation and bondage.

Others there are, who, terrified by the power of Britain, have persuaded themselves, that she is not only formidable, but irresistible. That her power is great, is beyond question; that it is not to be despised, is the dictate of common prudence. But, then, we ought also to consider her, as weak in council, and engulfed in debt; reduced in her trade; reduced in her revenue; immersed in pleasure; enervated with luxury; and, in dissipation and venality, surpassing all Europe. We ought to consider her as hated by a potent rival, her natural enemy, and particularly exasperated by her imperious conduct in the last war, as well as her insolent manner of commencing it; and thence inflamed with resentment, and only watching a favorable juncture for open hostilities. We ought to consider the amazing expense and difficulty of transporting troops and provisions above three thousand miles, with the impossibility of recruiting their army at a less distance; save only with such recreants, whose conscious guilt must, at the first approach of danger, appal the stoutest heart. Those insuperable obstacles are known and acknowledged by every virtuous and impartial man in the nation. Even the author of this horrid war, is incapable of concealing his own confusion and distress. Too great to be wholly suppressed, it frequently discovers itself in the course of his speech—a speech terrible in word, and fraught with contradiction; breathing threatenings and betraying terror; a motley mixture of magnanimity and conservation, of grandeur and abasement. With troops invincible, he dreads a defeat, and wants reinforcements. Victorious in America, and triumphant on the ocean, he is a humble dependent on a petty prince; and apprehends an attack upon his own metropolis; and, with full confidence in the friendship and alliance of France, he trembles upon his throne at her secret designs and open preparations.

With all this, we ought to contrast the numerous and hardy sons of America, inured to toil, seasoned alike to heat and cold, hale, robust, patient of fatigue, and, from their ardent love of liberty, ready to face danger and death; the immense extent of continent, which our infatuated enemies have undertaken to subjugate; the remarkable unanimity of its inhabitants, notwithstanding the exception of a few apostates and deserters; their unshaken resolution to maintain their freedom or perish in the attempt; the fertility of our soil in all kinds of provisions necessary for the support of war; our inexhaustible internal resources for military stores and naval armaments; our comparative economy in public expenses; and the millions we save by having reprobated the further exchange of our valuable staples for

the worthless baubles and finery of English manufacture. Add to this, that in a cause so just and righteous on our part, we have the highest reason to expect the blessing of Heaven upon our glorious conflict. For, who can doubt the interposition of the Supremely Just, in favor of a people, forced to recur to arms in defence of every thing dear and precious, against a nation deaf to our complaints, rejoicing in our misery, wantonly aggravating our oppressions, determined to divide our substance, and, by fire and sword, to compel us into submission?

Respecting the constitution of Great Britain, bating certain royal prerogatives of dangerous tendency, it has been applauded by the best judges; and displays, in its original structure, illustrious proofs of wisdom and the knowledge of human nature. But what avails the best constitution with the worst administration? For, what is their present government, and what has it been for years past, but a pensioned confederacy against reason, and virtue, and honor, and patriotism, and the rights of man? What were their leaders, but a set of political craftsmen, flagitiously conspiring to erect the babel, despotism, upon the ruins of the ancient and beautiful fabric of law; a shameless cabal, notoriously employed in deceiving the prince, corrupting the parliament, debasing the people, depressing the most virtuous, and exalting the most profligate; in short, an insatiable junto of public spoilers, lavishing the national wealth, and, by peculation and plunder, accumulating a debt already enormous? And what was the majority of their parliament, formerly the most august assembly in the world, but venal pensioners to the Crown; a perfect mockery of all popular representation; and, at the absolute devotion of every minister? What were the characteristics of their administration of the provinces? The substitution of regal instructions in the room of law; the multiplication of officers to strengthen the court interest; perpetually extending the prerogatives of the king, and retrenching the rights of the subject; advancing to the most eminent stations men, without education, and of the most dissolute manners; employing, with the people's money, a band of emissaries to misrepresent and traduce the people; and, to crown the system of misrule, sporting our persons and estates, by filling the highest seats of justice with bankrupts, bullies, and blockheads.

From such a nation, (though all this we bore, and should perhaps have borne for another century, had they not avowedly claimed the unconditional disposal of life and property,) it is evidently our duty to be detached. To remain happy or safe, in our connection with her, became thenceforth utterly impossible. She is moreover precipitating her own fall, or the age of miracles is returned, and Britain a phenomenon in the political world, without a parallel. The proclamations to ensnare the timid and credulous, are beyond expression disingenuous

and tantalizing. In a gilded pill they conceal real poison; they add insult to injury. After repeated intimations of commissioners to treat with America, we are presented, instead of the peaceful olive-branch, with the devouring sword: instead of being visited by plenipotentiaries to bring matters to an accommodation, we are invaded by an army, in their opinion, able to subdue us. And upon discovering their error, the terms propounded amount to this: "If you will submit without resistance, we are content to take your property, and spare your lives; and then (the consummation of arrogance!) we will graciously pardon you, for having hitherto defended both."

Considering, then, their bewildered councils, their blundering ministry, their want of men and money, their impaired credit and declining commerce, their lost revenues and starving islands, the corruption of their Parliament, with the effeminacy of their nation, and the success of their enterprise is against all probability. Considering further, the horrid enormity of their waging war against their own brethren, expostulating for an audience, complaining of injuries, and supplicating for redress, and waging it with a ferocity and vengeance unknown to moderate ages, and contrary to all laws, human and divine; and we can neither question the justice of our opposition, nor the assistance of Heaven to crown it with victory.

Let us not, however, presumptuously rely on the interposition of Providence, without exerting those efforts which it is our duty to exert, and which our bountiful Creator has enabled us to exert. Let us do our part to open the next campaign with redoubled vigor; and until the United States have humbled the pride of

Britain, and obtained an honorable peace, cheerfully furnish our proportion for continuing the war—a war, founded, on our side, in the immutable obligation of self-defence, and in support of freedom, of virtue, and every thing tending to ennoble our nature, and render a people happy; on their part, prompted by boundless avarice, and a thirst for absolute sway, and built on a claim repugnant to every principle of reason and equity—a claim subversive to all liberty, natural, civil, moral and religious; incompatible with human happiness, and usurping the attributes of Deity, degrading man and blaspheming God.

Let us all, therefore, of every rank and degree, remember our plighted faith and honor, to maintain the cause with our lives and fortunes. Let us inflexibly persevere in prosecuting, to a happy period, what has been so gloriously begun, and hitherto so prosperously conducted. And let those in more distinguished stations use all their influence and authority to rouse the supine, to animate the irresolute, to confirm the wavering, and to draw from his lurking hole the skulking neutral, who, leaving to others the heat and burden of the day, means in the final result to reap the fruits of that victory for which he will not contend. Let us be peculiarly assiduous in bringing to condign punishment those detestable parricides, who have been openly active against their country. And may we, in all our deliberations and proceedings, be influenced and directed by the great Arbiter of the fate of nations, by whom empires rise and fall, and who will not always suffer the sceptre of the wicked to rest on the lot of the righteous, but in due time avenge an injured people on their unfeeling oppressor and his bloody instruments.





*Fisher Ames*







## FISHER AMES.

FISHER AMES was born at Dedham, in Norfolk County, Massachusetts, on the ninth of April, 1758. He was descended from one of the oldest families in the province. His father, Nathaniel Ames, was a physician of some eminence. To his skill in his profession he added a knowledge of astronomy and mathematics, and for several years published an almanac or *An Astronomical Diary*, which was "yearly sought for on account of the correct calculations, trite maxims, and the strict morality which filled its interstices."

At an early age Fisher Ames exhibited an ardent fondness for classical literature. When only six years old he commenced the study of Latin, and although experiencing great disadvantages from a frequent change of instructors, he made rapid improvement, and was admitted to Harvard College in the year 1770, shortly after the completion of his twelfth year. While at college he was remarkable for his application and industry during the hours devoted to study, and for his vivacity and animation during those set apart for relaxation and pleasure. From the geniality and modesty of his character, he soon acquired the friendship of all around him. He was a member of a society which had been formed by the students for improvement in elocution. "It was early observed that he coveted the glory of eloquence. In his declamation before this society, he was remarked for the energy and propriety with which he delivered such specimens of impassioned oratory as his genius led him to select. His compositions at this time bore the characteristic stamp which has always marked his speaking and writing. They were sententious and full of ornament." In 1774 Mr. Ames graduated, and for a short time devoted himself to teaching, occupying the hours in which he was relieved from that employment in reviewing the classics he had studied at college, and in reading ancient and modern history, as well as "some of the best novels." He was a great lover of poetry, and became familiar with all the principal English writers in that branch of literature. He dwelt with enthusiasm upon the beauties of Milton and Shakspeare, and held in memory many of their choicest passages. This course of reading helped to furnish "that fund of materials for speaking and writing which he possessed in singular abundance, his remarkable fertility of allusion, and his ability to evolve a train of imagery adapted to every subject of which he treated."

Mr. Ames pursued a course of law under the care of William Tudor,\* of Boston, and in the fall of the year 1781 commenced practice in his native town. The affairs of government soon attracted his attention. On the twelfth of October, 1786, appeared from his pen a speculation upon the state of politics in Massachusetts, under the title of *Lucius Junius Brutus*, and in March of the year following he published two more pieces touching upon the same points, under the title of *Camillus*. These productions gave Mr. Ames much renown; "the leading men of the State turned their eyes to him as one destined to render the most important services to the

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\* William Tudor, a son of John Tudor, was born at Boston, Massachusetts, on the 28th of March, 1750. He graduated at Harvard College in 1769, studied law with John Adams, and was admitted to practice in 1772. In the army of the Revolution he held the commission of a colonel, and from 1775 to 1778 he was judge-advocate-general. He was a member of the House and Senate, and in 1809 and 1810 the Secretary of State. Of the Massachusetts Historical Society he was one of the founders. He died in July, 1808.—*Loring's Boston Orators: Mass. Hist. Collections.*

country." In 1788 he was chosen to the State legislature, in which assembly he advocated important educational measures, in view of elevating the character of the great mass of the people, and rendering them capable of higher enjoyments. In 1789 he was elected a member of the first Congress under the constitution, in which body he remained during the eight years of Washington's administration. He was a strong advocate of the federal policy, and on every question of importance took an active part. He opposed the commercial resolutions of Mr. Madison, because he thought "that commerce could not be served by regulations, which should oblige us to 'sell cheap and buy dear,' and he inferred that the effect of the resolutions could only be to gratify partialities and resentments, which all statesmen should discard." In April, 1796, he delivered his celebrated speech on the appropriation for Jay's Treaty, a production full of the deepest pathos and richest eloquence.\* At the termination of the session of Congress, Mr. Ames travelled at the south for his health, which had for many months been gradually sinking. On his partial recovery, he took his seat at the next session, and entered upon the duties of his office. At the end of this session he returned to his home at Dedham, and declining a re-election, took upon himself the practice of his profession. He continued writing political essays during the remainder of his life, all of which bear the mark of the statesman and ripe scholar. In the year 1804 he was called to the chair of the presidency of Harvard College, which honor he declined on account of failing health, and a consciousness that his habits were not adapted to the office. On the morning of the Fourth of July, 1808, he expired, having just completed the fiftieth year of his age.†

#### MADISON'S RESOLUTIONS.

The House of Representatives, on the third of January, 1794, resolved itself into a Committee of the Whole, on the report of Mr. Jefferson, Secretary of State, "On the nature and extent of the privileges and restrictions of the commercial intercourse of the United States with foreign nations, and the measures which he thought proper to be adopted for the improvement of the commerce and navigation of the same," when Mr. Madison introduced a series of resolutions, proposing to impose "further restrictions and higher duties, in certain

cases, on the manufactures and navigation of foreign nations, employed in the commerce of the United States, than those now imposed."\* On these resolutions Mr. Ames addressed the committee on the twenty-seventh of January, as follows:

MR. CHAIRMAN: The question lies within this compass: is there any measure proper to be adopted by Congress, which will have the effect to put our trade and navigation on a better footing? If there is, it is our undoubted right to adopt it, (if by right is understood the power of self-government, which every independent nation possesses,) and our own as completely as

\* Dr. Charles Caldwell, in his autobiography, thus speaks of Ames's eloquence: "He was decidedly one of the most splendid rhetoricians of the age. Two of his speeches, in a special manner—that on Jay's treaty, and that usually called his 'Tomahawk speech' (because it included some resplendent passages on Indian massacres)—were the most brilliant and fascinating specimens of eloquence I have ever heard; yet have I listened to some of the most celebrated speakers in the British Parliament—among others, to Wilberforce and Mackintosh, Plunket, Brougham, and Canning: and Dr. Priestley, who was familiar with the oratory of Pitt the father and Pitt the son, and also with that of Burke and Fox, made to myself the acknowledgment that, in his own words, the speech of Ames, on the British treaty, was the most bewitching piece of parliamentary oratory he had ever listened to."

† In the preparation of this sketch, the editor has relied mainly on Mr. Kirkland's chaste memoir of Mr. Ames, which is attached to the published works of that eminent orator.

\* Mr. Madison, in explanation of his motives and views, spoke of the security and extension of our commerce as a principal object for which the federal government was formed. He urged the tendency of his resolutions to secure to us an equitable share of the carrying trade; that they would enable other nations to enter into competition with England for supplying us with manufactures; and in this way he insisted that our country could make her enemies feel the extent of her power, by depriving those who manufactured for us of their bread. He adverted to the measures enforced by a certain nation contrary to our maritime rights, and out of the proceeds of the extra impositions proposed, he recommended a reimbursement to our citizens of their losses arising from those measures. He maintained that if the nation cannot protect the rights of its citizens, it ought to repay the damage; and that we are bound to obtain reparation for the injustice of foreign nations to our citizens, or to compensate them ourselves.—*Ames's Works*, page 24.

any other; it is our duty also, for we are the depositaries and the guardians of the interests of our constituents, which, on every consideration, ought to be dear to us. I make no doubt they are so, and that there is a disposition sufficiently ardent existing in this body, to co-operate in any measures, for the advancement of the common good. Indeed, so far as I can judge from any knowledge I have of human nature, or of the prevailing spirit of public transactions, that sort of patriotism which makes us wish the general prosperity, when our private interest does not happen to stand in the way, is no uncommon sentiment. In truth, it is very like self-love, and not much less prevalent. There is little occasion to excite and inflame it. It is, like self-love, more apt to want intelligence than zeal. The danger is always, that it will rush blindly into embarrassments, which a prudent spirit of inquiry might have prevented, but from which it will scarcely find means to extricate us. While therefore the right, the duty, and the inclination to advance the trade and navigation of the United States, are acknowledged and felt by us all, the choice of the proper means to that end is a matter requiring the most circumspect inquiry, and the most dispassionate judgment.

After a debate has continued a long time, the subject very frequently becomes tiresome before it is exhausted. Arguments, however solid, urged by different speakers, can scarcely fail to render the discussion both complex and diffusive. Without pretending to give to my arguments any other merit, I shall aim at simplicity.

We hear it declared, that the design of the resolutions is to place our trade and navigation on a better footing. By better footing, we are to understand a more profitable one. Profit is a plain word, that cannot be misunderstood.

We have, to speak in round numbers, twenty million dollars of exports annually. To have the trade of exports on a good footing, means nothing more than to sell them dear; and consequently, the trade of import on a good footing, is to buy cheap. To put them both on a better footing, is to sell dearer and to buy cheaper than we do at present. If the effect of the resolutions will be to cause our exports to be sold cheaper, and our imports to be bought dearer, our trade will suffer an injury.

It is hard to compute how great the injury would prove; for the first loss of value in the buying dear, and selling cheap, is only the symptom and beginning of the evil, but by no means the measure of it; it will withdraw a great part of the nourishment that now supplies the wonderful growth of our industry and opulence. The difference may not amount to a great proportion of the price of the articles, but it may reach the greater part of the profit of the producer; it may have effects in this way which will be of the worst kind, by discouraging the products of our land and industry. It is to this test I propose to bring the

resolutions on the table; and if it shall clearly appear, that they tend to cause our exports to be sold cheaper, and our imports to be bought dearer, they cannot escape condemnation. Whatever specious show of advantage may be given them, they deserve to be called aggravations of any real or supposed evils in our commercial system, and not remedies.

I have framed this statement of the question so as to comprehend the whole subject of debate, and at the same time, I confess it was my design to exclude from consideration a number of topics which appear to me totally irrelative to it.

The best answer to many assertions we have heard is, to admit them without proof. We are exhorted to assert our natural rights; to put trade on a respectable footing; to dictate terms of trade to other nations; to engage in a contest of self-denial, and by that, and by shifting our commerce from one country to another, to make our enemies feel the extent of our power. This language, as it respects the proper subject of discussion, means nothing, or what is worse. If our trade is already on a profitable footing, it is on a respectable one. Unless war be our object, it is useless to inquire, what are the dispositions of any government, with whose subjects our merchants deal to the best advantage. While they will smoke our tobacco, and eat our provisions, it is very immaterial, both to the consumer and the producer, what are the politics of the two countries, excepting so far as their quarrels may disturb the benefits of their mutual intercourse.

So far, therefore, as commerce is concerned, the inquiry is, have we a good market?

The good or bad state of our actual market is the question. The actual market is every where more or less a restricted one, and the natural order of things is displaced by the artificial. Most nations, for reasons of which they alone are the rightful judges, have regulated and restricted their intercourse, according to their views of safety and profit. We claim for ourselves the same right, as the acts in our statute book, and the resolutions on the table evince, without holding ourselves accountable to any other nation whatever. The right, which we properly claim, and which we properly exercise, when we do it prudently and usefully for our nation, is as well established, and has been longer in use in the countries of which we complain, than in our own. If their right is as good as that of Congress, to regulate and restrict, why do we talk of a strenuous exertion of our force, and by dictating terms to nations, who are fancied to be physically dependent on America, to change the policy of nations? It may be very true, that their policy is very wise and good for themselves, but not as favorable for us as we could make it, if we could legislate for both sides of the Atlantic.

The extravagant despotism of this language accords very ill with our power to give it effect, or with the affectation of zeal for an un-

limited freedom of commerce. Such a state of absolute freedom of commerce never did exist, and it is very much to be doubted whether it ever will. Were I invested with the trust to legislate for mankind, it is very probable the first act of my authority would be to throw all the restrictive and prohibitory laws of trade into the fire; the resolutions on the table would not be spared. But if I were to do so, it is probable I should have a quarrel on my hands with every civilized nation. The Dutch would claim the monopoly of the spice trade, for which their ancestors passed their whole lives in warfare. The Spaniards and Portuguese would be no less obstinate. If we calculate what colony monopolies have cost in wealth, in suffering, and in crimes, we shall say they were dearly purchased. The English would plead for their navigation act, not as a source of gain, but as an essential means of securing their independence. So many interests would be disturbed, and so many lost, by a violent change from the existing to an unknown order of things; and the mutual relations of nations, in respect to their power and wealth, would suffer such a shock, that the idea must be allowed to be perfectly Utopian and wild. But for this country to form the project of changing the policy of nations, and to begin the abolition of restrictions by restrictions of its own, is equally ridiculous and inconsistent.

Let every nation that is really disposed to extend the liberty of commerce, beware of rash and hasty schemes of prohibition. In the affairs of trade, as in most others, we make too many laws. We follow experience too little, and the visions of theorists a great deal too much. Instead of listening to discourses on what the market ought to be, and what the schemes, which always promise much on paper, pretend to make it, let us see what is the actual market for our exports and imports. This will bring vague assertions and sanguine opinions to the test of experience. That rage for theory and system, which would entangle even practical truth in the web of the brain, is the poison of public discussion. One fact is better than two systems.

The terms on which our exports are received in the British market, have been accurately examined by a gentleman from South Carolina, (Mr. William L. Smith.) Before his statement of facts was made to the committee, it was urged, and with no little warmth, that the system of England indicated her inveteracy towards this country, while that of France, springing from disinterested affection, constituted a claim for gratitude and self-denying measures of retribution.

Since that statement, however, that romantic style, which is so ill adapted to the subject, has been changed. We hear it insinuated, that the comparison of the footing of our exports, in the markets of France and England, is of no importance; that it is chiefly our object to see how we may assist and extend our commerce.

This evasion of the force of the statement, or rather this indirect admission of its authority, establishes it. It will not be pretended, that it has been shaken during the debate.

It has been made to appear, beyond contradiction, that the British market for our exports, taken in the aggregate, is a good one; that it is better than the French, and better than any we have, and for many of our products the only one.

The whole amount of our exports to the British dominions, in the year ending the 30th September, 1790, was nine million two hundred and forty-six thousand six hundred and six dollars.

But it will be more simple and satisfactory to confine the inquiry to the articles following: breadstuff, tobacco, rice, wood, the produce of the fisheries, fish oil, pot and pearl ash, salted meats, indigo, live animals, flax seed, naval stores, and iron.

The amount of the beforementioned articles exported in that same year to the British dominions, was eight million four hundred and fifty-seven thousand one hundred and seventy three dollars.

We have heard so much of restriction of inimical and jealous prohibitions to cramp our trade, it is natural to scrutinize the British system, with the expectation of finding little besides the effects of her selfish and angry policy.

Yet of the great sum of nearly eight millions and a half, the amount of the products beforementioned sold in her markets, two articles only are dutied by way of restriction. Bread stuff is dutied so high in the market of Great Britain as, in times of plenty, to exclude it, and this is done from the desire to favor her own farmers. The mover of the resolutions justified the exclusion of our breadstuff from the French West Indies by their permanent regulations, because, he said, they were bound to prefer their own products to those even of the United States. It would seem that the same apology would do for England in her home market. But what will do for the vindication of one nation becomes invective against another. The criminal nation however receives our breadstuff in the West Indies free, and excludes other foreign, so as to give our producers the monopoly of the supply. This is no merit in the judgment of the mover of the resolutions, because it is a fragment of her old colony system. Notwithstanding the nature of the duties on breadstuff in Great Britain, it has been clearly shown that she is a better customer for that article in Europe than her neighbor France. The latter, in ordinary times, is a poor customer for breadstuff, for the same reason that our own country is, because she produces it herself, and therefore France permits it to be imported, and the United States do the like. Great Britain often wants the article, and then she receives it; no country can be expected to buy what it does not want. The breadstuff sold in the European dominions of Britain, in the year

1790, amounted to one million eighty-seven thousand eight hundred and forty dollars.

Whale oil pays the heavy duty of eighteen pounds three shillings sterling per ton; yet spermaceti oil found a market there to the value of eighty-one thousand and forty-eight dollars.

Thus it appears, that of eight millions and a half sold to Great Britain and her dominions, only the value of one million one hundred and sixty-eight thousand dollars was under duty of a restrictive nature. The breadstuff is hardly to be considered as within the description; yet, to give the argument its full force, what is it? about one-eighth part is restricted. To proceed with the residue:

Indigo to the amount of . . . . .	\$478,830
Live animals to the West Indies . . . . .	62,415
Flax-seed to Great Britain . . . . .	219,924
Total . . . . .	\$756,169

These articles are received duty free, which is a good foot to the trade. Yet we find, good as it is, the bulk of our exports is received on even better terms:

Flour to the British West Indies, . . . . .	\$858,006
Grain, . . . . .	278,505
Free—while other foreign flour and grain are prohibited.	
Tobacco to Great Britain, . . . . .	2,754,493
Ditto to the West Indies, . . . . .	22,816
One shilling and three pence sterling duty; three shillings and sixpence on other foreign tobacco. In the West Indies, other foreign tobacco is prohibited.	
Rice to Great Britain, . . . . .	773,852
Seven shillings and four pence per cwt. duty; eight shillings and ten pence on other foreign rice.	
To West Indies, . . . . .	180,077
Other foreign rice prohibited.	
Wood to Great Britain, . . . . .	240,174
Free—higher duty on other foreign.	
To West Indies, . . . . .	382,481
Free—other foreign prohibited.	
Pot and pearl ashes, . . . . .	747,076
Free—two shillings and three pence on other foreign, equal to ten dollars per ton.	
Naval stores to Great Britain, . . . . .	190,670
Higher duties on other foreign.	
To West Indies, . . . . .	6,162
Free—other foreign prohibited.	
Iron to Great Britain, . . . . .	81,612
Free—duties on other foreign.	
	\$6,510,926

Thus it appears that nearly seven-eighths of the exports to the British dominions are received on terms of positive favor. Foreigners, our rivals in the sale of these articles, are either absolutely shut out of their market by prohibitions, or discouraged in their competition with us by higher duties. There is some restriction, it is admitted, but there is, to balance it, a large amount received duty free; and a half goes to the account of privilege and favor. This is better than she treats any other foreign nation. It is better, indeed, than she treats her own subjects, because they are by this means deprived of a free and open market. It is better than our footing with any nation with whom we have treaties. It has been demonstratively shown, that it is better than the footing on

which France receives either the like articles, or the aggregate of our products. The best proof in the world is, that they are not sent to France. The merchants will find out the best market sooner than we shall.

The footing of our exports, under the British system, is better than that of their exports to the United States, under our system. Nay, it is better than the freedom of commerce, which is one of the visions for which our solid prosperity is to be hazarded; for, suppose we could batter down her system of prohibitions and restrictions, it would be gaining a loss; one-eighth is restricted, and more than six-eighths have restrictions in their favor. It is as plain as figures can make it, that if a state of freedom for our exports is at par, the present system raises them, in point of privilege, above par. To suppose that we can terrify them by these resolutions to abolish their restrictions, and at the same time to maintain in our favor their duties, to exclude other foreigners from their market, is too absurd to be refuted.

We have heard that the market of France is the great centre of our interests; we are to look to her, and not to England, for advantages, being, as the style of theory is, our best customer and best friend, showing to our trade particular favor and privilege, while England manifests in her system such narrow and selfish views. It is strange to remark such a pointed refutation of assertions and opinions by facts. The amount sent to France herself is very trivial. Either our merchants are ignorant of the best markets, or those which they prefer are the best; and if the English markets, in spite of the alleged ill-usage, are still preferred to the French, it is a proof of the superior advantages of the former over the latter. The arguments I have adverted to, oblige those who urge them to make a greater difference in favor of the English than the true state of facts will warrant. Indeed, if they persist in their arguments, they are bound to deny their own conclusions. They are bound to admit this position: if France receives little of such of our products as Great Britain takes on terms of privilege and favor, because of that favor it allows the value of that favored footing. If France takes little of our articles, because she does not want them, it shows the absurdity of looking to her as the best customer.

It may be said, and truly, that Great Britain regards only her own interest in these arguments; so much the better. If it is her interest to afford to our commerce more encouragement than France gives: if she does this, when she is inveterate against us, as it is alleged, and when we are indulging an avowed hatred towards her, and partiality towards France, it shows that we have very solid ground to rely on. Her interest is, according to this statement, stronger than our passions, stronger than her own, and is the more to be depended on, as it cannot be put to any more trying experiment in future. The good will and friendship of nations are hollow foundations to build our

systems upon. Mutual interest is a bottom of rock: the fervor of transient sentiments is not better than straw or stubble. Some gentlemen have lamented this distrust of any relation between nations, except an interested one; but the substitution of any other principle could produce little else than the hypocrisy of sentiment, and an instability of affairs. It would be relying on what is not stable, instead of what is: it would introduce into politics the jargon of romance. It is in this sense, and this only, that the word favor is used: a state of things, so arranged as to produce our profit and advantage, though intended by Great Britain merely for her own. The disposition of a nation is immaterial; the fact, that we profit by their system, cannot be so to this discussion.

The next point is, to consider whether our imports are on a good footing, or, in other words, whether we are in a situation to buy what we have occasion for at a cheap rate. In this view, the systems of the commercial nations are not to be complained of, as all are desirous of selling the products of their labor. Great Britain is not censured in this respect. The objection is rather of the opposite kind, that we buy too cheap, and therefore consume too much; and that we take not only as much as we can pay for, but to the extent of our credit also. There is less freedom of importation, however, from the West Indies. In this respect, France is more restrictive than England; for the former allows the exportation to us of only rum and molasses, while England admits that of sugar, coffee, and other principal West India products. Yet, even here, when the preference seems to be decidedly due to the British system, occasion is taken to extol that of the French. We are told, that they sell us the chief part of the molasses, which is consumed or manufactured into rum; and that a great and truly important branch, the distillery, is kept up by their liberality in furnishing the raw material. There is at every step, matter to confirm the remark, that nations have framed their regulations to suit their own interests, not ours. France is a great brandy manufacturer; she will not admit rum, therefore, even from her own islands, because it would supplant the consumption of brandy. The molasses was for that reason, some years ago, of no value in her islands, and was not even saved in casks. But the demand from our country soon raised its value. The policy of England has been equally selfish. The molasses is distilled in her islands, because she has no manufacture of brandy to suffer by its sale.

A question remains respecting the state of our navigation. If we pay no regard to the regulations of foreign nations, and ask, whether this valuable branch of our industry and capital is in a distressed and sickly state, we shall find it is in a strong and flourishing condition. If the quantity of shipping was declining, if it was unemployed, even at low freight, I should

say, it must be sustained and encouraged. No such thing is asserted. Seamen's wages are high, freights are high, and American bottoms in full employment. But the complaint is, our vessels are not permitted to go to the British West Indies. It is even affirmed, that no civilized country treats us so ill in that respect. Spain and Portugal prohibit the traffic to their possessions, not only in our vessels, but in their own, which, according to the style of the resolutions, is worse treatment than we meet with from the British. It is also asserted, and on as bad ground, that our vessels are excluded from most of the British markets.

This is not true in any sense. We are admitted into the greater number of her ports, in our own vessels; and by far the greater value of our exports is sold in British ports, into which our vessels are received, not only on a good footing, compared with other foreigners, but on terms of positive favor, on better terms than British vessels are admitted into our own ports. We are not subject to the alien duties; and the light money, &c. of one shilling nine pence sterling per ton is less than our foreign tonnage duty, not to mention the ten *per centum*, on the duties on goods in foreign bottoms.

But in the port of London our vessels are received free. It is for the unprejudiced mind to compare these facts with the assertions we have heard so confidently and so feelingly made by the mover of the resolutions, that we are excluded from most of their ports, and that no civilized nation treats our vessels so ill as the British.

The tonnage of the vessels, employed between Great Britain and her dependencies and the United States, is called two hundred and twenty thousand; and the whole of this is represented as our just right. The same gentleman speaks of our natural right to the carriage of our own articles, and that we may and ought to insist upon our equitable share. Yet, soon after, he uses the language of monopoly, and represents the whole carriage of imports and exports as the proper object of our efforts, and all that others carry as a clear loss to us. If an equitable share of the carriage means half, we have it already, and more, and our proportion is rapidly increasing. If any thing is meant by the natural right of carriage, one would imagine that it belongs to him, whoever he may be, who, having bought our produce, and made himself the owner, thinks proper to take it with him to his own country. It is neither our policy nor our design to check the sale of our produce. We invite every description of purchasers, because we expect to sell dearest, when the number and competition of the buyers is the greatest. For this reason the total exclusion of foreigners and their vessels from the purchase and carriage of our exports, is an advantage, in respect to navigation, which has a disadvantage to balance it, in respect to the price of produce. It is with this reserve we

ought to receive the remark, that the carriage of our exports should be our object, rather than that of our imports. By going with our vessels into foreign ports we buy our imports in the best market. By giving a steady and moderate encouragement to our own shipping, without pretending violently to interrupt the course of business, experience will soon establish that order of things, which is most beneficial to the exporter, the importer, and the ship owner. The best interest of agriculture is the true interest of trade.

In a trade, mutually beneficial, it is strangely absurd to consider the gain of others as our loss. Admitting it, however, for argument sake, yet it should be noticed, that the loss of two hundred and twenty thousand tons of shipping, is computed according to the apparent tonnage. Our vessels not being allowed to go to the British West Indies, their vessels, making frequent voyages, appear in the entries over and over again. In the trade to the European dominions of Great Britain, the distance being greater, our vessels are not so often entered. Both these circumstances give a false show to the amount of British tonnage, compared with the American. It is, however, very pleasing to the mind, to see that our tonnage exceeds the British in the European trade. For various reasons, some of which will be mentioned hereafter, the tonnage in the West India trade, is not the proper subject of calculation. In the European comparison, we have more tonnage in the British than in the French commerce; it is indeed more than four to one.

The great quantity of British tonnage employed in our trade is also, in a great measure, owing to the large capitals of their merchants, employed in buying and exporting our productions. If we would banish the ships, we must strike at the root, and banish the capital. And this, before we have capital of our own grown up to replace it, would be an operation of no little violence and injury, to our southern brethren especially.

Independently of this circumstance, Great Britain is an active and intelligent rival in the navigation line. Her ships are dearer, and the provisioning of her seamen is perhaps rather dearer than ours: on the other hand, the rate of interest is lower in England, and so are seamen's wages. It would be improper, therefore, to consider the amount of British tonnage in our trade, as a proof of a bad state of things, arising either from the restrictions of that government, or the negligence or timidity of this. We are to charge it to causes which are more connected with the natural competition of capital and industry; causes which, in fact, retarded the growth of our shipping more, when we were colonies and our ships were free, than since the adoption of the present government.

It has been said with emphasis, that the constitution grew out of the complaints of the nation respecting commerce, especially that with the British dominions. What was then lament-

ed by our patriots? Feebleness of the public councils; the shadow of union, and scarcely the shadow of public credit; every where despondence, the pressure of evils, not only great but portentous of civil distractions. These were the grievances; and what more was then desired than their remedies? Is it possible to survey this prosperous country and to assert that they have been delayed? Trade flourishes on our wharves, although it droops in speeches. Manufactures have risen under the shade of protecting duties, from almost nothing, to such a state that we are even told we can depend on the domestic supply, if the foreign should cease. The fisheries, which we found in decline, are in the most vigorous growth: the whale fishery, which our allies would have transferred to Dunkirk, now extends over the whole ocean. To that hardy race of men, the sea is but a park for hunting its monsters; such is their activity, the deepest abysses scarcely afford to their prey a hiding place. Look around and see how the frontier circle widens, how the interior improves, and let it be repeated that the hopes of the people, when they formed this constitution, have been frustrated.

But if it should happen that our prejudices prove stronger than our senses; if it should be believed that our farmers and merchants see their products and ships and wharves going to decay together, and they are ignorant or silent on their own ruin; still the public documents would not disclose so alarming a state of our affairs. Our imports are obtained so plentifully and cheaply, that one of the avowed objects of the resolutions is, to make them scarcer and dearer. Our exports, so far from languishing, have increased two millions of dollars in a year. Our navigation is found to be augmented beyond the most sanguine expectation. We hear of the vast advantage the English derived from the navigation act: and we are asked in a tone of accusation, shall we sit still and do nothing? Who is bold enough to say, Congress has done nothing for the encouragement of American navigation? To counteract the navigation act, we have laid on British, a higher tonnage than our own vessels pay in their ports; and what is much more effectual, we have imposed ten *per centum* on the duties, when the dutied articles are borne in foreign bottoms. We have also made the coasting trade a monopoly to our own vessels. Let those who have asserted that this is nothing, compare facts with the regulations which produced them.

Tonnage.	Tons.	Excess of American tonnage
American, 1789, . . .	297,468	
Foreign, . . . . .	265,116	
		82,852
American, 1790, . . .	347,668	
Foreign, . . . . .	255,916	
		88,747
American, 1791, . . .	368,810	
Foreign, . . . . .	240,799	
		123,011
American, 1792, . . .	415,830	
Foreign, . . . . .	244,268	
		171,067

Is not this increase of American shipping rapid enough? Many persons say it is too rapid, and attracts too much capital for the circumstances of the country. I cannot readily persuade myself to think so valuable a branch of employment thrives too fast. But a steady and sure encouragement is more to be relied on than violent methods of forcing its growth. It is not clear that the quantity of our navigation, including our coasting and fishing vessels, is less in proportion to those of that nation: in that computation we shall probably find that we are already more a navigating people than the English.

As this is a growing country, we have the most stable ground of dependence on the corresponding growth of our navigation; and that the increasing demand for shipping will rather fall to the share of Americans than foreigners, is not to be denied. We did expect this from the nature of our own laws; we have been confirmed in it by experience; and we know that an American bottom is actually preferred to a foreign one. In cases where one partner is an American, and another a foreigner, the ship is made an American bottom. A fact of this kind overthrows a whole theory of reasoning on the necessity of further restrictions. It shows that the work of restriction is already done.

If we take the aggregate view of our commercial interests, we shall find much more occasion for satisfaction, and even exultation, than complaint, and none for despondence. It would be too bold to say that our condition is so eligible there is nothing to be wished. Neither the order of nature, nor the allotments of Providence, afford perfect content; and it would be absurd to expect in our politics what is denied in the laws of our being. The nations with whom we have intercourse have, without exception, more or less restricted their commerce. They have framed their regulations to suit their real or fancied interests. The code of France is as full of restrictions as that of England. We have regulations of our own; and they are unlike those of any other country. Inasmuch as the interest and circumstances of nations vary so essentially, the project of an exact reciprocity on our part is a vision. What we desire is, to have, not an exact reciprocity, but an intercourse of mutual benefit and convenience.

It has scarcely been so much as insinuated that the change contemplated will be a profitable one; that it will enable us to sell dearer and to buy cheaper: on the contrary, we are invited to submit to the hazards and losses of a conflict with our customers; to engage in a contest of self-denial. For what—to obtain better markets? No such thing; but to shut up for ever, if possible, the best market we have for our exports, and to confine ourselves to the dearest and scarcest markets for our imports. And this is to be done for the benefit of trade; or, as it is sometimes more correctly

said, for the benefit of France. This language is not a little inconsistent and strange from those who recommend a non-importation agreement, and who think we should even renounce the sea and devote ourselves to agriculture. Thus, to make our trade more free, it is to be embarrassed, and violently shifted from one country to another, not according to the interest of the merchants, but the visionary theories and capricious rashness of the legislators. To make trade better, it is to be made nothing.

So far as commerce and navigation are regarded, the pretences for this contest are confined to two. We are not allowed to carry manufactured articles to Great Britain, nor any products, except of our own growth; and we are not permitted to go with our own vessels to the West Indies. The former, which is a provision of the navigation act, is of little importance to our interests, as our trade is chiefly a direct one, our shipping not being equal to the carrying for other nations; and our manufactured articles are not furnished in quantities for exportation, and if they were, Great Britain would not be a customer. So far, therefore, the restriction is rather nominal than real.

The exclusion of our vessels from the West Indies is of more importance. When we propose to make an effort to force a privilege from Great Britain, which she is loth to yield to us, it is necessary to compare the value of the object with the effort, and above all, to calculate very warily the probability of success. A trivial thing deserves not a great exertion; much less ought we to stake a very great good in possession, for a slight chance of a less good. The carriage of one half the exports and imports to and from the British West Indies, is the object to be contended for. Our whole exports to Great Britain are to be hazarded. We sell on terms of privilege, and positive favor, as it has been abundantly shown, near seven millions to the dominions of Great Britain. We are to risk the privilege in this great amount—for what? For the freight only of one half the British West India trade with the United States. It belongs to commercial men to calculate the entire value of the freight alluded to. But it cannot bear much proportion to the amount of seven millions. Besides, if we are denied the privilege of carrying our articles in our vessels to the islands, we are on a footing of privilege in the sale of them. We have one privilege, if not two. It is readily admitted, that it is a desirable thing to have our vessels allowed to go to the English islands; but the value of the object has its limits, and we go unquestionably beyond them, when we throw our whole exports into confusion, and run the risk of losing our best markets, for the sake of forcing a permission to carry our own products to one of those markets; in which, too, it should be noticed, we sell much less than we do to Great Britain herself. If to this we add, that the success of the contest is grounded on the sanguine and passionate hypothesis of our



being able to starve the islanders, which, on trial, may prove false, and which our being involved in the war would overthrow at once, we may conclude, without going further into the discussion, that prudence forbids our engaging in the hazards of a commercial war; that great things should not be staked against such as are of much less value; that what we possess should not be risked for what we desire, without great odds in our favor; still less, if the chance is infinitely against us.

If these considerations should fail of their effect, it will be necessary to go into an examination of the tendency of the system of discrimination, to redress and avenge all our wrongs, and to realize all our hopes.

It has been avowed that we are to look to France, not to England, for advantages in trade. We are to show our spirit, and to manifest towards those who are called enemies, the spirit of enmity, and towards those we call friends, something more than passive good will. We are to take active measures to force trade out of its accustomed channels, and to shift it by such means from England to France. The care of the concerns of the French manufacturers may be, perhaps, as well left in the hands of the convention, as usurped into our own. However our zeal might engage us to interpose, our duty to our own immediate constituents demands all our attention. To volunteer it, in order to excite competition in one foreign nation to supplant another, is a very strange business; and to do it, as it has been irresistibly proved it will happen, at the charge and cost of our own citizens, is a thing equally beyond all justification and all example. What is it but to tax our own people for a time, perhaps for a long time, in order that the French may at last sell as cheap as the English?—cheaper they cannot, nor is it so much as pretended. The tax will be a loss to us, and the fancied tendency of it not a gain to this country in the event, but to France. We shall pay more for a time, and in the end pay no less; for no object but that one nation may receive our money, instead of the other. If this is generous towards France, it is not just to America. It is sacrificing what we owe to our constituents, to what we pretend to feel towards strangers. We have indeed heard a very ardent profession of gratitude to that nation, and infinite reliance seems to be placed on her readiness to sacrifice her interest to ours. The story of this generous strife should be left to ornament fiction. This is not the form nor the occasion to discharge our obligations of any sort to any foreign nation: it concerns not our feelings but our interests; yet the debate has often soared high above the smoke of business into the epic region. The market for tobacco, tar, turpentine and pitch, has become matter of sentiment; and given occasion alternately to rouse our courage and our gratitude.

If, instead of hexameters, we prefer discussing our relation to foreign nations in the com-

mon language, we shall not find that we are bound by treaty to establish a preference in favor of the French. The treaty is founded on a professed reciprocity, favor for favor. Why is the principle of treaty or no treaty made so essential, when the favor we are going to give is an act of supererogation? It is not expected by one of the nations in treaty: for Holland has declared in her treaty with us, that such preferences are the fruitful source of animosity, embarrassment and war. The French have set no such example. They discriminate, in their late navigation act, not as we are exhorted to do, between nations in treaty and not in treaty, but between nations at war and not at war with them; so that, when peace takes place, England will stand, by that act, on the same ground with ourselves. If we expect by giving favor to get favor in return, it is improper to make a law. The business belongs to the executive, in whose hands the constitution has placed the power of dealing with foreign nations. It is singular to negotiate legislatively; to make by a law half a bargain, expecting a French law would make the other. The footing of treaty or no treaty is different from the ground taken by the mover himself in supporting his system. He has said, favor for favor is principle: nations not in treaty grant favors, those in treaty restrict our trade. Yet the principle of discriminating in favor of nations in treaty, is not only inconsistent with the declared doctrine of the mover and with facts, but it is inconsistent with itself. Nations not in treaty, are so very unequally operated upon by the resolutions, it is absurd to refer them to one principle. Spain and Portugal have no treaties with us, and are not disposed to have. Spain would not accede to the treaty of commerce between us and France, though she was invited; Portugal would not sign a treaty after it had been discussed and signed on our part. They have few ships or manufactures, and do not feed their colonies from us: of course there is little for the discrimination to operate upon. The operation on nations in treaty is equally a satire on the principle of discrimination. In Sweden, with whom we have a treaty, duties rise higher if borne in our bottoms, than in her own. France does the like, in respect to tobacco, two and a half livres the kente, which in effect prohibits our vessels to freight tobacco. The mover has, somewhat unluckily, proposed to except from this system nations having no navigation acts; in which case, France would become the subject of unfriendly discrimination, as the House have been informed since the debate began, that she has passed such acts.

I might remark on the disposition of England to settle a commercial treaty, and the known desire of the Marquis of Lansdown, (then prime minister,) in 1788, to form such an one on the most liberal principles. The history of that business, and the causes which prevented its conclusion, ought to be made known to the public. The powers given to our ministers

were revoked, and yet we hear, that no such disposition on the part of Great Britain has existed. The declaration of Mr. Pitt in parliament, in June, 1792, as well as the correspondence with Mr. Hammond, shows a desire to enter upon a negotiation. The statement of the report of the secretary of state, on the privileges and restrictions of our commerce, that Great Britain has shown no inclination to meddle with the subject, seems to be incorrect.

The expected operation of the resolutions on different nations, is obvious, and I need not examine their supposed tendency to dispose Great Britain to settle an equitable treaty with this country; but I ask, whether those who hold such language towards that nation as I have heard, can be supposed to desire a treaty and friendly connection. It seems to be thought a merit to express hatred: it is common and natural to desire to annoy and to crush those whom we hate, but it is somewhat singular to pretend, that the design of our anger is to embrace them.

The tendency of angry measures to friendly dispositions and arrangements, is not obvious. We affect to believe, that we shall quarrel ourselves into their good will: that we shall beat a new path to peace and friendship with Great Britain—one that is grown up with thorns, and lined with men-traps and spring-guns. It should be called the war path.

To do justice to the subject, its promised advantages should be examined. Exciting the competition of the French, is to prove an advantage to this country, by opening a new market with that nation. This is scarcely intelligible. If it means any thing, it is an admission, that their market is not a good one, or that they have not taken measures to favor our traffic with them. In either case, our system is absurd. The balance of trade is against us, and in favor of England. But the resolutions can only aggravate that evil, for, by compelling us to buy dearer and sell cheaper, the balance will be turned still more against our country. Neither is the supply from France less the aliment of luxury, than that from England. Their excess of credit is an evil, which we pretend to cure by checking the natural growth of our own capital, which is the undoubted tendency of restraining trade; the progress of the remedy is thus delayed. If we will trade, there must be capital. It is best to have it of our own; if we have it not, we must depend on credit. Wealth springs from the profits of employment, and the best writers on the subject establish it, that employment is in proportion to the capital that is to excite and reward it. To strike off credit, which is the substitute for capital, if it were possible to do it, would so far stop employment. Fortunately, it is not possible; the activity of individual industry eludes the misjudging power of governments. The resolutions would, in effect, increase the demand for credit, as our products selling for less in a new market, and our im-

ports being bought dearer, there would be less money and more need of it. Necessity would produce credit. Where the laws are strict, it will soon find its proper level; the uses of credit will remain, and the evil will disappear.

But the whole theory of balances of trade, of helping it by restraint, and protecting it by systems of prohibition and restriction against foreign nations, as well as the remedy for credit, are among the exploded dogmas, which are equally refuted by the maxims of science and the authority of time. Many such topics have been advanced, which were known to exist as prejudices, but were not expected as arguments. It seems to be believed, that the liberty of commerce is of some value. Although there are restrictions on one side, there will be some liberty left: counter restrictions, by diminishing that liberty, are in their nature aggravations and not remedies. We complain of the British restrictions as of a millstone: our own system will be another; so that our trade may hope to be situated between the upper and the nether millstone.

On the whole, the resolutions contain two great principles—to control trade by law, instead of leaving it to the better management of the merchants; and the principle of a sumptuary law. To play the tyrant in the counting-house, and in directing the private expenses of our citizens, are employments equally unworthy of discussion.

Besides the advantages of the system, we have been called to another view of it, which seems to have less connection with the merits of the discussion. The acts of states, and the votes of public bodies, before the constitution was adopted, and the votes of the House since, have been stated as grounds for our assent to this measure at this time. To help our own trade, to repel any real or supposed attack upon it, cannot fail to prepossess the mind: accordingly, the first feelings of every man yield to this proposition. But the sober judgment, on the tendency and reasonableness of the intermeddling of government, often does, and probably ought still oftener to change our impressions. On a second view of the question, the man, who voted formerly for restrictions, may say, much has been done under the new constitution, and the good effects are yet making progress. The necessity of measures of counter restriction will appear to him much less urgent, and their efficacy, in the present turbulent state of Europe, infinitely less to be relied on. Far from being inconsistent in his conduct, consistency will forbid his pressing the experiment of his principle under circumstances which baffle the hopes of its success. But if so much stress is laid on former opinions, in favor of this measure, how happens it that there is so little on that which now appears against it? Not one merchant has spoken in favor of it in this body; not one navigating or commercial state has patronized it.

It is necessary to consider the dependence of

the British West India islands on our supplies. I admit, that they cannot draw them so well, and so cheap, from any other quarter; but this is not the point. Are they physically dependent? Can we starve them—and may we reasonably expect, thus to dictate to Great Britain a free admission of our vessels into her islands? A few details will prove the negative.—Beef and pork sent from the now United States to the British West Indies, 1773, fourteen thousand, nine hundred and ninety-three barrels. In the war time, 1780, ditto from England, seventeen thousand, seven hundred and ninety-five: at the end of the war, 1783, sixteen thousand, five hundred and twenty-six. Ireland exported, on an average of seven years prior to 1777, two hundred and fifty thousand barrels. Salted fish the English take in abundance, and prohibit its importation from us. Butter and cheese from England and Ireland are but lately banished even from our markets. Exports from the now United States, 1773; horses, two thousand, seven hundred and sixty-eight; cattle, one thousand, two hundred and three; sheep and hogs, five thousand, three hundred and twenty. Twenty-two years prior to 1791, were exported from England to all ports, twenty-nine thousand, one hundred and thirty-one horses. Ireland, on an average of seven years to 1777, exported four thousand and forty-five stock, exclusive of hogs. The coast of Barbary, the Cape de Verdes, &c. supply sheep and cattle. The islands, since the war, have increased their domestic supplies to a great degree.

The now United States exported about one hundred and thirty thousand barrels of flour, in 1773, to the West Indies. Ireland, by grazing less, could supply wheat; England herself usually exports it; she also imports from Archangel. Sicily and the Barbary States furnish wheat in abundance. We are deceived, when we fancy we can starve foreign countries. France is reckoned to consume grain at the rate of seven bushels to each soul. Twenty-six millions of souls, the quantity one hundred and eighty-two millions of bushels. We export, to speak in round numbers, five or six millions of bushels to all the different countries, which we supply; a trifle this to their wants. Frugality is a greater resource. Instead of seven bushels, perhaps two could be saved by stinting the consumption of the food of cattle, or by the use of other food. Two bushels saved to each soul is fifty-two millions of bushels, a quantity which the whole trading world, perhaps, could not furnish. Rice is said to be prohibited by Spain and Portugal to favor their own. Brazil could supply their rice instead of ours.

I must warn you of the danger of despising Canada and Nova Scotia too much as rivals in the West India supply of lumber, especially the former. The dependence, the English had placed on them some years ago, failed, partly because we entered into competition with them on very superior terms, and partly because they

were then in an infant state. They are now supposed to have considerably more than doubled their numbers since the peace; and if, instead of having us for competitors for the supply as before, we should shut ourselves out by refusing our supplies, or being refused entry for them, those two colonies would rise from the ground; at least we should do more to bring it about than the English ministry have been able to do. In 1772, six hundred and seventy-nine vessels, the actual tonnage of which was one hundred and twenty-eight thousand, were employed in the West India trade from Great Britain. They were supposed, on good ground, to be but half freighted to the islands; they might carry lumber, and the freight supposed to be deficient would be, at forty shillings sterling the ton, one hundred and twenty-eight thousand pounds sterling. This sum would diminish the extra charge of carrying lumber to the islands. But is lumber to be had?—Yes, in Germany, and from the Baltic. It is even cheaper in Europe than our own: besides which, the hard woods, used in mills, are abundant in the islands.

We are told they can sell their rum only to the United States. This concerns not their subsistence, but their profit. Examine it, however. In 1773, the now United States took near three million gallons of rum. The remaining British colonies, Newfoundland, and the African coast, have a considerable demand for this article. The demand of Ireland is very much on the increase. It was, in 1763, five hundred and thirty thousand gallons; 1770, one million, five hundred and fifty-eight thousand gallons; 1778, one million, seven hundred and twenty-nine thousand gallons.

Thus we see, a total stoppage of the West India trade would not starve the islanders. It would affect us deeply; we should lose the sale of our products, and, of course, not gain the carriage in our own vessels; the object of the contest would be no nearer our reach than before. Instead, however, of a total stoppage of the intercourse, it might happen, that each nation prohibiting the vessels of the other, some third nation would carry on the traffic in its own bottoms. While this measure would disarm our system, it would make it recoil upon ourselves. It would, in effect, operate chiefly to obstruct the sale of our products. If they should remain unsold, it would be so much dead loss; or if the effect should be to raise the price on the consumers, it would either lessen the consumption, or raise up rivals in the supply. The contest, as it respects the West India trade, is in every respect against us. To embarrass the supply from the United States, supposing the worst as it regards the planters, can do no more than enhance the price of sugar, coffee and other products. The French islands are now in ruins, and the English planters have an increased price and double demand in consequence. While Great Britain confined the colony trade to herself, she gave to the colonists

in return a monopoly in her consumption of West India articles. The extra expense, arising from the severest operation of our system, is already provided against, two fold; like other charges on the products of labor and capital, the burden will fall on the consumer. The luxurious and opulent consumer in Europe will not regard, and perhaps will not know, the increase of price nor the cause of it. The new settler, who clears his land and sells the lumber, will feel any convulsion in the market more sensibly, without being able to sustain it at all. It is a contest of wealth against want of self-denial, between luxury and daily subsistence, that we provoke with so much confidence of success. A man of experience in the West India trade will see this contrast more strongly than it is possible to represent it.

One of the excellences, for which the measure is recommended, is, that it will affect our imports. What is offered as an argument, is really an objection. Who will supply our wants? Our own manufactures are growing, and it is a subject of great satisfaction that they are. But it would be wrong to overrate their capacity to clothe us. The same number of inhabitants require more and more, because wealth increases. Add to this the rapid growth of our numbers, and perhaps it will be correct to estimate the progress of manufactures as only keeping pace with that of our increasing consumption and population. It follows, that we shall continue to demand, in future, to the amount of our present importation. It is not intended by the resolutions, that we shall import from England. Holland and the north of Europe do not furnish a sufficient variety, or sufficient quantity for our consumption. It is in vain to look to Spain, Portugal, and the Italian States. We are expected to depend principally upon France: it is impossible to examine the ground of this dependence without adverting to the present situation of that country. It is a subject upon which I practise no disguise; but I do not think it proper to introduce the politics of France into this discussion. If others can find in the scenes that pass there, or in the principles and agents that direct them, proper subjects for amiable names, and sources of joy and hope in the prospect, I have nothing to say to it: it is an amusement, which it is not my intention either to disturb or to partake of. I turn from these horrors, to examine the condition of France in respect to manufacturing capital and industry. In this point of view, whatever political improvements may be hoped for, it cannot escape observation, that it presents only a wide field of waste and desolation. Capital, which used to be food for manufactures, is become their fuel. What once nourished industry, now lights the fires of civil war, and quickens the progress of destruction. France is like a ship, with a fine cargo, burning to the water's edge; she may be built upon anew, and freighted with another cargo, and it will be time enough, when that shall be, to depend on

a part of it for our supply: at present, and for many years, she will not be so much a furnisher as a consumer. It is therefore obvious, that we shall import our supplies either directly or indirectly from Great Britain. Any obstruction to the importation will raise the price which we who consume must bear.

That part of the argument which rests on the supposed distress of the British manufactures, in consequence of the loss of our market, is in every view unfounded. They would not lose the market, in fact, and if they did, we prodigiously exaggerate the importance of our consumption to the British workmen. Important it doubtless is, but a little attention will expose the extreme folly of the opinion, that they would be brought to our feet by a trial of our self-denying spirit. England now supplants France in the important Levant trade, in the supply of manufactured goods to the East, and, in a great measure, to the West Indies, to Spain, Portugal, and their dependencies. Her trade with Russia has, of late, vastly increased; and she is treating for a trade with China: so that the new demands of English manufactures, consequent upon the depression of France as a rival, has amounted to much more than the whole American importation, which is not three millions.

The ill effect of a system of restriction and prohibition in the West Indies, has been noticed already. The privileges allowed to our exports to England may be withdrawn, and prohibitory or high duties imposed.

The system before us is a mischief that goes to the root of our prosperity. The merchants will suffer by the schemes and projects of a new theory. Great numbers were ruined by the convulsions of 1775. They are an order of citizens deserving better of government than to be involved in new confusions. It is wrong to make our trade wage war for our politics. It is now scarcely said that it is a thing to be sought for, but a weapon to fight with. To gain our approbation to the system, we are told, it is to be gradually established. In that case, it will be unavailing. It should be begun with in all its strength, if we think of starving the islands. Drive them suddenly and by surprise to extremity, if you would dictate terms; but they will prepare against a long expected failure of our supplies.

Our nation will be tired of suffering loss and embarrassment for the French. The struggle, so painful to ourselves, so ineffectual against England, will be renounced, and we shall sit down with shame and loss, with disappointed passions and aggravated complaints. War, which would then suit our feelings, would not suit our weakness. We might, perhaps, find some European power willing to make war on England, and we might be permitted by a strict alliance, to partake the misery and the dependence of being a subaltern in the quarrel. The happiness of this situation seems to be in view, when the system before us is avowed to be the

instrument of avenging our political resentments. Those who affect to dread foreign influence, will do well to avoid a partnership in European jealousies and rivalships. Courting the friendship of the one, and provoking the hatred of the other, is dangerous to our real independence; for it would compel America to throw herself into the arms of the one for protection against the other. Then foreign influence, pernicious as it is, would be sought for; and though it should be shunned, it could not be resisted. The connections of trade form ties between individuals, and produce little control over government. They are the ties of peace, and are neither corrupt nor corrupting.

We have happily escaped from a state of the most imminent danger to our peace: a false step would lose all the security for its continuance, which we owe at this moment to the conduct of the President. What is to save us from war? Not our own power which inspires no terror; not the gentle and forbearing spirit of the powers of Europe at this crisis; not the weakness of England; not her affection for this country, if we believe the assurances of gentlemen on the other side. What is it, then? It is the interest of Great Britain to have America for a customer rather than an enemy: and it is precisely that interest which gentlemen are so eager to take away and to transfer to France. And what is stranger still, they say they rely on that operation as a means of producing peace with the Indians and Algerines. The wounds inflicted on Great Britain by our enmity, are expected to excite her to supplicate our friendship, and to appease us by soothing the animosity of our enemies. What is to produce effects so mystical, so opposite to nature, so much exceeding the efficacy of their pretended causes? This wonder-working paper on the table is the weapon of terror and destruction. Like the writing on Belshazzar's wall, it is to strike parliaments and nations with dismay: it is to be stronger than fleets against pirates, or than armies against Indians. After the examination it has undergone, credulity itself will laugh at these pretensions.

We pretend to expect, not by the force of our restrictions, but by the mere show of our spirit, to level all the fences that have guarded for ages the monopoly of the colony trade. The repeal of the navigation act of England, which is cherished as the palladium of her safety, which time has rendered venerable, and prosperity endeared to her people, is to be extorted, from her fears of a weaker nation. It is not to be yielded freely, but violently torn from her; and yet the idea of a struggle to prevent indignity and loss, is considered as a chimera too ridiculous for sober refutation. She will not dare, say they, to resent it; and gentlemen have pledged themselves for the success of the attempt: what is treated as a phantom, is vouched by fact. Her navigation act is known

to have caused an immediate contest with the Dutch, and four desperate sea fights ensued in consequence, the very year of its passage.

How far it is an act of aggression for a neutral nation to assist the supplies of one neighbor, and to annoy and distress another, at the crisis of a contest between the two, which strains their strength to the utmost, is a question which we might not agree in deciding; but the tendency of such unseasonable partiality to exasperate the spirit of hostility against the intruder, cannot be doubted. The language of the French government would not soothe this spirit. It proposes, on the sole condition of a political connection, to extend to us a part of their West India commerce. The coincidence of our measures with their invitation, however singular, needs no comment. Of all men, those are least consistent who believe in the efficacy of the regulations, and yet affect to ridicule their hostile tendency. In the commercial conflict, say they, we shall surely prevail and effectually humble Great Britain.

In open war we are the weaker, and shall be brought into danger, if not to ruin. It depends, therefore, according to their own reasoning, on Great Britain herself, whether she will persist in a struggle which will disgrace and weaken her, or turn it into a war which will throw the shame and ruin upon her antagonist. The topics which furnish arguments to show the danger to our peace from the resolutions, are too fruitful to be exhausted. But without pursuing them further, the experience of mankind has shown that commercial rivalships, which spring from mutual efforts for monopoly, have kindled more wars, and wasted the earth more, than the spirit of conquest.

I hope we shall show by our vote that we deem it better policy to feed nations than to starve them, and that we shall never be so unwise as to put our good customers into a situation to be forced to make every exertion to do without us. By cherishing the arts of peace, we shall acquire, and we are actually acquiring, the strength and resources for a war. Instead of seeking treaties, we ought to shun them; for the later they shall be formed, the better will be the terms: we shall have more to give, and more to withhold. We have not yet taken our proper rank, nor acquired that consideration, which will not be refused us, if we persist in prudent and pacific counsels; if we give time for our strength to mature itself. Though America is rising with a giant's strength, its bones are yet but cartilages. By delaying the beginning of a conflict, we insure the victory.

By voting out the resolutions, we shall show to our own citizens and foreign nations that our prudence has prevailed over our prejudices, that we prefer our interests to our resentments. Let us assert a genuine independence of spirit; we shall be false to our duty and feelings as Americans, if we basely descend to a servile dependence on France and Great Britain.

## THE BRITISH TREATY.

A Treaty of Amity, Commerce, and Navigation between the United States and Great Britain, was concluded on the nineteenth day of November, 1794. Subsequently it was ratified by the President. On the second of March, 1796, the President proclaimed it the law of the land, and the same day communicated it to the House of Representatives, in order that the necessary appropriations might be made to carry it into effect. On the twenty-eighth of April following, in Committee of the Whole on the subjoined resolution: "*Resolved*, as the opinion of this Committee, that it is expedient to pass the laws necessary for carrying into effect the Treaty with Great Britain;" Mr. Ames spoke thus:

MR. CHAIRMAN, I entertain the hope, perhaps a rash one, that my strength will hold me out to speak a few minutes.

In my judgment, a right decision will depend more on the temper and manner, with which we may prevail upon ourselves to contemplate the subject, than upon the development of any profound political principles, or any remarkable skill in the application of them. If we could succeed to neutralize our inclinations, we should find less difficulty than we have to apprehend in surmounting all our objections.

The suggestion, a few days ago, that the House manifested symptoms of heat and irritation, was made and retorted as if the charge ought to create surprise, and would convey reproach. Let us be more just to ourselves, and to the occasion. Let us not affect to deny the existence and the intrusion of some portion of prejudice and feeling into the debate, when, from the very structure of our nature, we ought to anticipate the circumstance as a probability, and when we are admonished by the evidence of our senses that it is the fact.

How can we make professions for ourselves, and offer exhortations to the House, that no influence should be felt but that of duty, and no guide respected but that of the understanding, while the peal to rally every passion of man is continually ringing in our ears.

Our understandings have been addressed, it is true, and with ability and effect; but, I demand, has any corner of the heart been left unexplored? It has been ransacked to find auxiliary arguments, and, when that attempt failed, to awaken the sensibilities that would require none. Every prejudice and feeling has been summoned to listen to some peculiar style of address; and yet we seem to believe, and to consider a doubt as an affront, that we are strangers to any influence but that of unbiassed reason.

It would be strange, that a subject, which has roused in turn all the passions of the country, should be discussed without the interference of any of our own. We are men, and therefore not exempt from those passions: as citizens and representatives, we feel the interests that must excite them. The hazard of great interests cannot fail to agitate strong passions. We are not disinterested; it is impossible we should be dispassionate. The warmth of such feelings may becloud the judgment, and, for a time, pervert the understanding. But the public sensibility, and our own, has sharpened the spirit of inquiry, and given an animation to the debate. The public attention has been quickened to mark the progress of the discussion, and its judgment, often hasty and erroneous on first impressions, has become solid and enlightened at last. Our result will, I hope, on that account, be the safer and more mature, as well as more accordant with that of the nation. The only constant agents in political affairs are the passions of men. Shall we complain of our nature—shall we say that man ought to have been made otherwise? It is right already, because he, from whom we derive our nature, ordained it so; and because thus made and thus acting, the cause of truth and the public good is the more surely promoted.

But an attempt has been made to produce an influence of a nature more stubborn, and more unfriendly to truth. It is very unfairly pretended, that the constitutional right of this House is at stake, and to be asserted and preserved only by a vote in the negative. We hear it said, that this is a struggle for liberty, a manly resistance against the design to nullify this assembly, and to make it a cipher in the government: that the President and senate, the numerous meetings in the cities, and the influence of the general alarm of the country, are the agents and instruments of a scheme of coercion and terror, to force the treaty down our throats, though we loathe it, and in spite of the clearest convictions of duty and conscience.\*

It is necessary to pause here and inquire, whether suggestions of this kind be not unfair in their very texture and fabric, and pernicious in all their influences. They oppose an obstacle in the path of inquiry, not simply discouraging, but absolutely insurmountable. They will not yield to argument; for as they were not reasoned up, they cannot be reasoned down. They are higher than a Chinese wall in truth's way, and built of materials that are indestructible. While this remains, it is vain to argue; it is vain to say to this mountain, be thou cast

\* See Hildreth's History of the United States, second series, vol. 1, page 539, et seq.

into the sea. For, I ask of the men of knowledge of the world, whether they would not hold him for a blockhead, that should hope to prevail in an argument, whose scope and object is to mortify the self-love of the expected proselyte? I ask further, when such attempts have been made, have they not failed of success? The indignant heart repels a conviction that is believed to debase it.

The self-love of an individual is not warmer in its sense, nor more constant in its action, than what is called in French, *l'esprit du corps*, or the self-love of an assembly; that jealous affection which a body of men is always found to bear towards its own prerogatives and power. I will not condemn this passion. Why should we urge an unmeaning censure, or yield to groundless fears that truth and duty will be abandoned, because men in a public assembly are still men, and feel that *esprit du corps* which is one of the laws of their nature? Still less should we despond or complain, if we reflect, that this very spirit is a guardian instinct, that watches over the life of this assembly. It cherishes the principle of self-preservation, and without its existence, and its existence with all the strength we see it possess, the privileges of the representatives of the people, and mediately the liberties of the people, would not be guarded, as they are, with a vigilance that never sleeps, and an unrelaxing constancy and courage.

If the consequences, most unfairly attributed to the vote in the affirmative, were not chimerical, and worse, for they are deceptive, I should think it a reproach to be found even moderate in my zeal, to assert the constitutional powers of this assembly; and whenever they shall be in real danger, the present occasion affords proof, that there will be no want of advocates and champions.

Indeed, so prompt are these feelings, and when once roused, so difficult to pacify, that if we could prove the alarm was groundless, the prejudice against the appropriations may remain on the mind, and it may even pass for an act of prudence and duty to negative a measure, which was lately believed by ourselves, and may hereafter be misconceived by others, to encroach upon the powers of the House. Principles that bear a remote affinity with usurpation on those powers will be rejected, not merely as errors, but as wrongs. Our sensibilities will shrink from a post, where it is possible they may be wounded, and be inflamed by the slightest suspicion of an assault.

While these prepossessions remain, all argument is useless. It may be heard with the ceremony of attention, and lavish its own resources, and the patience it wears, to no nanner of purpose. The ears may be open, but the mind will remain locked up, and every pass to the understanding guarded.

Unless, therefore, this jealous and repulsive fear for the rights of the House can be allayed, I will not ask a hearing.

I cannot press this topic too far; I cannot address myself with too much emphasis to the magnanimity and candor of those who sit here, to suspect their own feelings, and, while they do, to examine the grounds of their alarm. I repeat it, we must conquer our persuasion, that this body has an interest in one side of the question more than the other, before we attempt to surmount our objections. On most subjects, and solemn ones too, perhaps in the most solemn of all, we form our creed more from inclination than evidence.

Let me expostulate with gentlemen to admit, if it be only by way of supposition, and for a moment, that it is barely possible they have yielded too suddenly to their alarms for the powers of this House; that the addresses, which have been made with such variety of forms, and with so great dexterity in some of them, to all that is prejudice and passion in the heart, are either the effects or the instruments of artifice and deception, and then let them see the subject once more in its singleness and simplicity.

It will be impossible, on taking a fair review of the subject, to justify the passionate appeals that have been made to us to struggle for our liberties and rights, and the solemn exhortations to reject the proposition, said to be concealed in that on your table, to surrender them for ever. In spite of this mock solemnity, I demand, if the House will not concur in the measure to execute the treaty, what other course shall we take? How many ways of proceeding lie open before us?

In the nature of things there are but three, we are either to make the treaty, to observe it, or break it. It would be absurd to say we will do neither. If I may repeat a phrase already so much abused, we are under coercion to do one of them, and we have no power, by the exercise of our discretion, to prevent the consequences of a choice.

By refusing to act, we choose. The treaty will be broken and fall to the ground. Where is the fitness, then, of replying to those who urge upon the House the topics of duty and policy, that they attempt to force the treaty down, and to compel this assembly to renounce its discretion and to degrade itself to the rank of a blind and passive instrument in the hands of the treaty-making power? In case we reject the appropriation, we do not secure any greater liberty of action, we gain no safer shelter than before from the consequences of the decision. Indeed, they are not to be evaded. It is neither just nor manly to complain that the treaty-making power has produced this coercion to act. It is not the art or the despotism of that power, it is the nature of things that compels. Shall we, dreading to become the blind instruments of power, yield ourselves the blinder dupes of mere sounds of imposture? Yet that word, that empty word, coercion, has given scope to an eloquence, that, one would imagine, could not be tired, and did not choose to be quieted.



Let us examine still more in detail the alternatives that are before us, and we shall scarcely fail to see, in still stronger lights, the futility of our apprehensions for the power and liberty of the House.

If, as some have suggested, the thing called a treaty is incomplete, if it has no binding force or obligation, the first question is, will this House complete the instrument, and, by concurring, impart to it that force which it wants.

The doctrine has been avowed, that the treaty, though formally ratified by the executive power of both nations, though published as a law for our own by the President's proclamation, is still a mere proposition submitted to this assembly, no way distinguishable in point of authority or obligation, from a motion for leave to bring in a bill, or any other original act of ordinary legislation. This doctrine, so novel in our country, yet so dear to many, precisely for the reason, that in the contention for power, victory is always dear, is obviously repugnant to the very terms as well as the fair interpretation of our own resolutions—(Mr. Blount's.) We declare, that the treaty-making power is exclusively vested in the President and Senate, and not in this House. Need I say, that we fly in the face of that resolution, when we pretend, that the acts of that power are not valid until we have concurred in them? It would be nonsense, or worse, to use the language of the most glaring contradiction, and to claim a share in a power, which we at the same time disclaim as exclusively vested in other departments.

What can be more strange than to say, that the compacts of the President and Senate with foreign nations are treaties, without our agency, and yet those compacts want all power and obligation, until they are sanctioned by our concurrence? It is not my design in this place, if at all, to go into the discussion of this part of the subject. I will, at least for the present, take it for granted, that this monstrous opinion stands in little need of remark, and if it does, lies almost out of the reach of refutation.

But, say those who hide the absurdity under the cover of ambiguous phrases, have we no discretion? and if we have, are we not to make use of it in judging of the expediency or inexpediency of the treaty? Our resolution claims that privilege, and we cannot surrender it without equal inconsistency and breach of duty.

If there be any inconsistency in the case, it lies, not in making the appropriations for the treaty, but in the resolution itself—(Mr. Blount's.) Let us examine it more nearly. A treaty is a bargain between nations, binding in good faith; and what makes a bargain? The assent of the contracting parties. We allow that the treaty power is not in this House; this House has no share in contracting, and is not a party: of consequence, the President and Senate alone may make a treaty that is binding in good faith. We claim, however, say the gentlemen, a right to judge of the expediency of

treaties; that is the constitutional province of our discretion. Be it so. What follows? Treaties, when adjudged by us to be inexpedient, fall to the ground, and the public faith is not hurt. This, incredible and extravagant as it may seem, is asserted. The amount of it, in plainer language, is this—the President and Senate are to make national bargains, and this House has nothing to do in making them. But bad bargains do not bind this House, and, of inevitable consequence, do not bind the nation. When a national bargain, called a treaty, is made, its binding force does not depend upon the making, but upon our opinion that it is good. As our opinion on the matter can be known and declared only by ourselves, when sitting in our legislative capacity, the treaty, though ratified, and, as we choose to term it, made, is hung up in suspense, till our sense is ascertained. We condemn the bargain, and it falls, though, as we say, our faith does not. We approve a bargain as expedient, and it stands firm, and binds the nation. Yet, even in this latter case, its force is plainly not derived from the ratification by the treaty-making power, but from our approbation. Who will trace these inferences, and pretend that we have no share, according to the argument, in the treaty-making power? These opinions, nevertheless, have been advocated with infinite zeal and perseverance. Is it possible that any man can be hardy enough to avow them and their ridiculous consequences?

Let me hasten to suppose the treaty is considered as already made, and then the alternative is fairly presented to the mind, whether we will observe the treaty or break it. This, in fact, is the naked question.

If we choose to observe it with good faith, our course is obvious. Whatever is stipulated to be done by the nation, must be complied with. Our agency, if it should be requisite, cannot be properly refused. And I do not see why it is not as obligatory a rule of conduct for the legislative as for the courts of law.

I cannot lose this opportunity to remark, that the coercion, so much dreaded and declaimed against, appears at length to be no more than the authority of principles, the despotism of duty. Gentlemen complain we are forced to act in this way, we are forced to swallow the treaty. It is very true, unless we claim the liberty of abuse, the right to act as we ought not. There is but one right way open for us, the laws of morality and good faith have fenced up every other. What sort of liberty is that, which we presume to exercise against the authority of those laws? It is for tyrants to complain, that principles are restraints, and that they have no liberty, so long as their despotism has limits. These principles will be unfolded by examining the remaining question:

#### SHALL WE BREAK THE TREATY?

The treaty is bad, fatally bad, is the cry. I.



sacrifices the interest, the honor, the independence of the United States, and the faith of our engagements to France. If we listen to the clamor of party intemperance, the evils are of a number not to be counted, and of a nature not to be borne, even in idea. The language of passion and exaggeration may silence that of sober reason in other places, it has not done it here. The question here is, whether the treaty be really so very fatal as to oblige the nation to break its faith. I admit that such a treaty ought not to be executed. I admit that self-preservation is the first law of society, as well as of individuals. It would, perhaps, be deemed an abuse of terms to call that a treaty, which violates such a principle. I waive also, for the present, any inquiry, what departments shall represent the nation, and annul the stipulations of a treaty. I content myself with pursuing the inquiry, whether the nature of this compact be such as to justify our refusal to carry it into effect. A treaty is the promise of a nation. Now, promises do not always bind him that makes them.

But I lay down two rules, which ought to guide us in this case. The treaty must appear to be bad, not merely in the petty details, but in its character, principle and mass. And in the next place, this ought to be ascertained by the decided and general concurrence of the enlightened public. I confess there seems to me something very like ridicule thrown over the debate by the discussion of the articles in detail.

The undecided point is, shall we break our faith? And while our country and enlightened Europe await the issue with more than curiosity, we are employed to gather peacemeal, and article by article, from the instrument, a justification for the deed by trivial calculations of commercial profit and loss. This is little worthy of the subject, of this body, or of the nation. If the treaty is bad, it will appear to be so in its mass. Evil to a fatal extreme, if that be its tendency, requires no proof; it brings it. Extremes speak for themselves and make their own law. What if the direct voyage of American ships to Jamaica with horses or lumber, might net one or two *per centum* more than the present trade to Surinam; would the proof of the fact avail any thing in so grave a question as the violation of the public engagements?

It is in vain to allege, that our faith, plighted to France, is violated by this new treaty. Our prior treaties are expressly saved from the operation of the British treaty. And what do those mean who say, that our honor was forfeited by treating at all, and especially by such a treaty? Justice, the laws and practice of nations, a just regard for peace as a duty to mankind, and the known wish of our citizens, as well as that self-respect which required it of the nation to act with dignity and moderation, all these forbade an appeal to arms, before we had tried the effect of negotiation. The honor of the United States was saved, not forfeited, by treating. The treaty itself, by its stipula-

tions for the posts, for indemnity, and for a due observation of our neutral rights, has justly raised the character of the nation. Never did the name of America appear in Europe with more lustre than upon the event of ratifying this instrument. The fact is of a nature to overcome all contradiction.

But the independence of the country—we are colonists again. This is the cry of the very men who tell us, that France will resent our exercise of the rights of an independent nation to adjust our wrongs with an aggressor, without giving her the opportunity to say, those wrongs shall subsist and shall not be adjusted. This is an admirable specimen of the spirit of independence. The treaty with Great Britain, it cannot be denied, is unfavorable to this strange sort of independence.

Few men of any reputation for sense, among those who say the treaty is bad, will put that reputation so much at hazard as to pretend that it is so extremely bad as to warrant and require a violation of the public faith. The proper ground of the controversy, therefore, is really unoccupied by the opposers of the treaty; as the very hinge of the debate is on the point, not of its being good or otherwise, but whether it is intolerably and fatally pernicious. If loose and ignorant declaimers have any where asserted the latter idea, it is too extravagant, and too solidly refuted, to be repeated here. Instead of any attempt to expose it still further, I will say, and I appeal with confidence to the candor of many opposers of the treaty to acknowledge, that if it had been permitted to go into operation silently, like our other treaties, so little alteration of any sort would be made by it in the great mass of our commercial and agricultural concerns, that it would not be generally discovered by its effects to be in force, during the term for which it was contracted. I place considerable reliance on the weight men of candor will give to this remark, because I believe it to be true, and little short of undeniable. When the panic dread of the treaty shall cease, as it certainly must, it will be seen through another medium. Those, who shall make search into the articles for the cause of their alarms, will be so far from finding stipulations that will operate fatally, they will discover few of them that will have any lasting operation at all. Those, which relate to the disputes between the two countries, will spend their force on the subjects in dispute, and extinguish them. The commercial articles are more of a nature to confirm the existing state of things, than to change it. The treaty alarm was purely an address to the imagination and prejudices of the citizens, and not on that account the less formidable. Objections that proceed upon error, in fact or calculation, may be traced and exposed; but such as are drawn from the imagination or addressed to it, elude definition, and return to domineer over the mind, after having been banished from it by truth.

I will not so far abuse the momentary strength that is lent to me by the zeal of the occasion, as to enlarge upon the commercial operation of the treaty. I proceed to the second proposition, which I have stated as indispensably requisite to a refusal of the performance of a treaty—will the state of public opinion justify the deed?

No government, not even a despotism, will break its faith without some pretext, and it must be plausible, it must be such as will carry the public opinion along with it. Reasons of policy, if not of morality, dissuade even Turkey and Algiers from breaches of treaty in mere wantonness of perfidy, in open contempt of the reproaches of their subjects. Surely, a popular government will not proceed more arbitrarily, as it is more free; nor with less shame or scruple in proportion as it has better morals. It will not proceed against the faith of treaties at all, unless the strong and decided sense of the nation shall pronounce, not simply that the treaty is not advantageous, but that it ought to be broken and annulled. Such a plain manifestation of the sense of the citizens is indispensably requisite; first, because if the popular apprehensions be not an infallible criterion of the disadvantages of the instrument, their acquiescence in the operation of it is an irrefragable proof, that the extreme case does not exist, which alone could justify our setting it aside.

In the next place, this approving opinion of the citizens is requisite, as the best preventive of the ill consequences of a measure always so delicate, and often so hazardous. Individuals would, in that case at least, attempt to repel the opprobrium that would be thrown upon Congress by those who will charge it with perfidy. They would give weight to the testimony of facts, and the authority of principles, on which the government would rest its vindication. And if war should ensue upon the violation, our citizens would not be divided from their government, nor the ardor of their courage be chilled by the consciousness of injustice, and the sense of humiliation, that sense which makes those despicable who know they are despised.

I add a third reason, and with me it has a force that no words of mine can augment, that a government, wantonly refusing to fulfil its engagements, is the corrupter of its citizens. Will the laws continue to prevail in the hearts of the people, when the respect that gives them efficacy is withdrawn from the legislators? How shall we punish vice while we practise it? We have not force, and vain will be our reliance, when we have forfeited the resources of opinion. To weaken government and to corrupt morals are effects of a breach of faith not to be prevented; and from effects they become causes, producing, with augmented activity, more disorder and more corruption; order will be disturbed and the life of the public liberty shortened.

And who, I would inquire, is hardly enough

to pretend, that the public voice demands the violation of the treaty? The evidence of the sense of the great mass of the nation is often equivocal; but when was it ever manifested with more energy and precision than at the present moment? The voice of the people is raised against the measure of refusing the appropriations. If gentlemen should urge, nevertheless, that all this sound of alarm is a counterfeit expression of the sense of the public, I will proceed to other proofs. If the treaty is ruinous to our commerce, what has blinded the eyes of the merchants and traders? Surely they are not enemies to trade, or ignorant of their own interests. Their sense is not so liable to be mistaken as that of a nation, and they are almost unanimous. The articles, stipulating the redress of our injuries by captures on the sea, are said to be delusive. By whom is this said? The very men, whose fortunes are staked upon the competency of that redress, say no such thing. They wait with anxious fear lest you should annul that compact on which all their hopes are rested.

Thus we offer proof, little short of absolute demonstration, that the voice of our country is raised not to sanction, but to deprecate the non-performance of our engagements. It is not the nation, it is one, and but one branch of the government that proposes to reject them. With this aspect of things, to reject is an act of desperation.

I shall be asked, why a treaty so good in some articles, and so harmless in others, has met with such unrelenting opposition; and how the clamors against it from New Hampshire to Georgia, can be accounted for? The apprehensions so extensively diffused, on its first publication, will be vouched as proof, that the treaty is bad, and that the people hold it in abhorrence.

I am not embarrassed to find the answer to this insinuation. Certainly a foresight of its pernicious operation, could not have created all the fears that were felt or affected. The alarm spread faster than the publication of the treaty. There were more critics than readers. Besides, as the subject was examined, those fears have subsided.

The movements of passion are quicker than those of the understanding. We are to search for the causes of first impressions, not in the articles of this obnoxious and misrepresented instrument, but in the state of the public feeling.

The fervor of the revolutionary war had not entirely cooled, nor its controversies ceased, before the sensibilities of our citizens were quickened with a tenfold vivacity, by a new and extraordinary subject of irritation. One or the two great nations of Europe underwent a change which has attracted all our wonder, and interested all our sympathies. Whatever they did, the zeal of many went with them, and often went to excess. These impressions met with much to inflame, and nothing to re-

strain them. In our newspapers, in our feasts, and some of our elections, enthusiasm was admitted a merit, a test of patriotism, and that made it contagious. In the opinion of party, we could not love or hate enough. I dare say, in spite of all the obloquy it may provoke, we were extravagant in both. It is my right to avow that passions so impetuous, enthusiasm so wild, could not subsist without disturbing the sober exercise of reason, without putting at risk the peace and precious interests of our country. They were hazarded. I will not exhaust the little breath I have left, to say how much, nor by whom, or by what means they were rescued from the sacrifice. Shall I be called upon to offer my proofs? They are here, they are every where. No one has forgotten the proceedings of 1794.\* No one has forgotten the captures of our vessels, and the imminent danger of war. The nation thirsted not merely for reparation, but vengeance. Suffering such wrongs, and agitated by such resentments, was it in the power of any words of compact, or could any parchment with its seals prevail at once to tranquillize the people? It was impossible. Treaties in England are seldom popular, and least of all when the stipulations of amity succeed to the bitterness of hatred. Even the best treaty, though nothing be refused, will choke resentment, but not satisfy it.

\* Soon after France declared war against England, citizen Genet (whose civism had assisted the revolution that had just been effected at Geneva), was despatched to the United States for the purpose, as appears by his instructions, of engaging them to take part in the war, and in case the government, from motives of prudence and a desire to remain in peace, could not be enlisted, the people were to be stirred up, and by a revolutionary process, plunged into a contest which has done more injury to the morals and happiness of nations than all the wars of the last century.

Citizen Genet, perceiving that the success of this mission could only be expected from a revolutionary movement of the people, commenced his operations at the place of his landing, and by his own agency and that of his partisans, every popular passion was inflamed, and every convenient means employed through all the States, to produce distrust and confusion among our citizens, and a disorganization of our government. During this disgraceful contest between this foreign agent and our executive, the public opinion for a time hung doubtful and undecided—to the honor of our country, virtue and good sense ultimately triumphed over this incendiary.

The revolutionary labors of Citizen Genet were performed in the spring and summer of 1793; his instructions were probably early known in England, and the spirit and hostility towards that country, which during this season appeared throughout the United States, together with the numerous equipments in our ports of privateers under French commissions, must naturally have produced an opinion in the British Cabinet, that the United States would ultimately engage in the war on the side of France. The orders of the sixth of November, and the speech of Lord Dorchester to the Indians, are more satisfactorily accounted for by supposing the existence of this opinion in England, than by the extravagant supposition that has been so often made, that they meditated war against the United States because our citizens were free and our government a republic.

Every treaty is as sure to disappoint extravagant expectations as to disarm extravagant passions. Of the latter, hatred is one that takes no bribes. They who are animated by the spirit of revenge, will not be quieted by the possibility of profit.

Why do they complain, that the West Indies are not laid open? Why do they lament, that any restriction is stipulated on the commerce of the East Indies? Why do they pretend, that if they reject this, and insist upon more, more will be accomplished? Let us be explicit—more would not satisfy. If all was granted, would not a treaty of amity with Great Britain still be obnoxious? Have we not this instant heard it urged against our envoy, that he was not ardent enough in his hatred of Great Britain? A treaty of amity is condemned because it was not made by a foe, and in the spirit of one. The same gentleman, at the same instant, repeats a very prevailing objection, that no treaty should be made with the enemy of France. No treaty, exclaim others, should be made with a monarch or a despot: there will be no naval security while those sea-robbers domineer on the ocean: their den must be destroyed: that nation must be exterminated.

I like this, sir, because it is sincerity. With feelings such as these, we do not pant for treaties. Such passions seek nothing, and will be content with nothing, but the destruction of their object. If a treaty left king George his island, it would not answer; not if he stipulated to pay rent for it. It has been said, the world ought to rejoice if Britain was sunk in the sea; if where there are now men and wealth and laws and liberty, there was no more than a sand bank for the sea-monsters to fatten on; a space for the storms of the ocean to mingle in conflict.

I object nothing to the good sense or humanity of all this. I yield the point, that this is a proof that the age of reason is in progress. Let it be philanthropy, let it be patriotism, if you will, but it is no indication that any treaty would be approved. The difficulty is not to overcome the objections to the terms; it is to restrain the repugnance to any stipulations of amity with the party.

Having alluded to the rival of Great Britain, I am not unwilling to explain myself; I affect no concealment, and I have practised none. While those two great nations agitate all Europe with their quarrels, they will both equally desire, and with any chance of success, equally endeavor to create an influence in America. Each will exert all its arts to range our strength on its own side. How is this to be effected? Our government is a democratical republic. It will not be disposed to pursue a system of politics, in subservience to either France or England, in opposition to the general wishes of the citizens: and, if Congress should adopt such measures, they would not be pursued long, nor with much success. From the nature of our government, popularity is the instrument

of foreign influence. Without it, all is labor and disappointment. With that mighty auxiliary, foreign intrigue finds agents, not only volunteers, but competitors for employment, and any thing like reluctance is understood to be a crime. Has Britain this means of influence? Certainly not. If her gold could buy adherents, their becoming such would deprive them of all political power and importance. They would not wield popularity as a weapon, but would fall under it. Britain has no influence, and for the reasons just given can have none. She has enough; and God forbid she ever should have more. France, possessed of popular enthusiasm, of party attachments, has had, and still has too much influence on our politics—any foreign influence is too much, and ought to be destroyed. I detest the man and disdain the spirit, that can bend to a mean subserviency to the views of any nation. It is enough to be Americans. That character comprehends our duties, and ought to engross our attachments.

But I would not be misunderstood. I would not break the alliance with France; I would not have the connection between the two countries even a cold one. It should be cordial and sincere; but I would banish that influence, which, by acting on the passions of the citizens, may acquire a power over the government.

It is no bad proof of the merit of the treaty, that, under all these unfavorable circumstances, it should be so well approved. In spite of first impressions, in spite of misrepresentation and party clamor, inquiry has multiplied its advocates; and at last the public sentiment appears to me clearly preponderating to its side.

On the most careful review of the several branches of the treaty, those which respect political arrangements, the spoliation on our trade, and the regulation of commerce, there is little to be apprehended. The evil, aggravated as it is by party, is little in degree, and short in duration; two years from the end of the European war. I ask, and I would ask the question significantly, what are the inducements to reject the treaty? What great object is to be gained, and fairly gained by it? If, however, as to the merits of the treaty, candor should suspend its approbation, what is there to hold patriotism a moment in balance, as to the violation of it? Nothing; I repeat confidently, nothing. There is nothing before us in that event but confusion and dishonor.

But before I attempt to develop those consequences, I must put myself at ease by some explanation.

Nothing is worse received among men than the confutation of their opinions; and, of these, none are more dear or more vulnerable than their political opinions. To say that a proposition leads to shame and ruin, is almost equivalent to a charge that the supporters of it intend to produce them. I throw myself upon the magnanimity and candor of those who hear me. I cannot do justice to my subject without

exposing, as forcibly as I can, all the evils in prospect. I readily admit, that in every science, and most of all in politics, error springs from other sources than the want of sense or integrity. I despise indiscriminate professions of candor and respect. There are individuals opposed to me of whom I am not bound to say any thing. But of many, perhaps of a majority of the opposers of the appropriations, it gives me pleasure to declare, they possess my confidence and regard. There are among them individuals for whom I entertain a cordial affection.

The consequences of refusing to make provision for the treaty are not all to be foreseen. By rejecting, vast interests are committed to the sport of the winds. Chance becomes the arbiter of events, and it is forbidden to human foresight to count their number, or measure their extent. Before we resolve to leap into this abyss, so dark and so profound, it becomes us to pause and reflect upon such of the dangers as are obvious and inevitable. If this assembly should be wrought into a temper to defy these consequences, it is vain, it is deceptive, to pretend that we can escape them. It is worse than weakness to say, that as to public faith our vote has already settled the question. Another tribunal than our own is already erected. The public opinion, not merely of our own country, but of the enlightened world, will pronounce a judgment that we cannot resist, that we dare not even affect to despise.

Well may I urge it to men who know the worth of character, that it is no trivial calamity to have it contested. Refusing to do what the treaty stipulates shall be done, opens the controversy. Even if we should stand justified at last, a character that is vindicated is something worse than it stood before, unquestioned and unquestionable. Like the plaintiff in an action of slander, we recover a reputation disfigured by invective, and even tarnished by too much handling. In the combat for the honor of the nation it may receive some wounds, which, though they should heal, will leave scars. I need not say, for surely the feelings of every bosom have anticipated, that we cannot guard this sense of national honor, this everlasting fire which alone keeps patriotism warm in the heart, with a sensibility too vigilant and jealous.

If, by executing the treaty, there is no possibility of dishonor, and if, by rejecting, there is some foundation for doubt and for reproach, it is not for me to measure, it is for your own feelings to estimate the vast distance that divides the one side of the alternative from the other.

If, therefore, we should enter on the examination of the question of duty and obligation with some feelings of prepossession, I do not hesitate to say, they are such as we ought to have: it is an after inquiry to determine whether they are such as ought finally to be resisted.

The resolution (Mr. Blount's\*) is less explicit than the constitution. Its patrons should have made it more so, if possible, if they had any doubts, or meant the public should entertain none. Is it the sense of that vote, as some have insinuated, that we claim a right, for any cause or no cause at all but our own sovereign will and pleasure, to refuse to execute, and thereby to annul the stipulations of a treaty—that we have nothing to regard but the expediency or inexpediency of the measure, being absolutely free from all obligation by compact to give it our sanction? A doctrine so monstrous, so shameless, is refuted by being avowed. There are no words you could express it in, that would not convey both confutation and reproach. It would outrage the ignorance of the tenth century to believe, it would baffle the casuistry of a papal council to vindicate. I venture to say it is impossible: no less impossible than that we should desire to assert the scandalous privilege of being free after we have pledged our honor.

It is doing injustice to the resolution of the House, (which I dislike on many accounts) to strain the interpretation of it to this extravagance. The treaty-making power is declared by it to be vested exclusively in the President and Senate. Will any man in his senses affirm that it can be a treaty before it has any binding force or obligation? If it has no binding force upon us, it has none upon Great Britain. Let candor answer, is Great Britain free from any obligation to deliver the posts in June, and are we willing to signify to her that we think so? Is it with that nation a question of mere expediency or inexpediency to do it, and that, too, even after we have done all that depends upon us to give the treaty effect? No sober man believes this. No one, who would not join in condemning the faithless proceedings of that nation, if such a doctrine should be avowed and carried into practice—and why complain, if Great Britain is not bound? There can be

no breach of faith where none is plighted. I shall be told that she is bound. Surely it follows, that if she is bound to performance, our nation is under a similar obligation; if both parties be not obliged, neither is obliged, it is no compact, no treaty. This is a dictate of law and common sense, and every jury in the country has sanctioned it on oath.

It cannot be a treaty and yet no treaty, a bargain, yet no promise; if it is a promise, I am not to read a lecture to show why an honest man will keep his promise.

The reason of the thing, and the words of the resolution of the House, imply that the United States engage their good faith in a treaty. We disclaim, say the majority, the treaty-making power; we of course disclaim (they ought to say) every doctrine that would put a negative upon the doings of that power. It is the prerogative of folly alone to maintain both sides of a proposition.

Will any man affirm the American nation is engaged by good faith to the British nation; but that engagement is nothing to this House? Such a man is not to be reasoned with. Such a doctrine is a coat of mail, that would turn the edge of all the weapons of argument, if they were sharper than a sword. Will it be imagined the King of Great Britain and the President are mutually bound by the treaty, but the two nations are free?

It is one thing for this House to stand in a position that presents an opportunity to break the faith of America, and another to establish a principle that will justify the deed.

We feel less repugnance to believe that any other body is bound by obligation than our own. There is not a man here who does not say that Great Britain is bound by treaty. Bring it nearer home. Is the Senate bound? Just as much as the House, and no more. Suppose the Senate, as part of the treaty power, by ratifying a treaty on Monday, pledges the public faith to do a certain act. Then, in their ordinary capacity as a branch of the legislature, the Senate is called upon on Tuesday to perform that act, for example, an appropriation of money—is the Senate (so lately under obligation) now free to agree or disagree to the act? If the twenty ratifying senators should rise up and avow these principles, saying, we struggle for liberty, we will not be ciphers, mere puppets, and give their votes accordingly, would not shame blister their tongues, would not infamy tingle in their ears—would not their country, which they had insulted and dishonored, though it should be silent and forgiving, be a revolutionary tribunal, a rack on which their own reflections would stretch them?

This, sir, is a cause that would be dishonored and betrayed, if I contented myself with appealing only to the understanding. It is too cold, and its processes are too slow for the occasion. I desire to thank God, that since he has given me an intellect so fallible, he has im-

\* The following are the resolutions moved by Mr. Blount, of North Carolina, to which Mr. Ames refers: *Resolved*, That it being declared by the second section of the second article of the constitution, "that the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur," the House of Representatives do not claim any agency in making treaties; but that when a treaty stipulates regulations on any of the subjects submitted by the constitution to the power of Congress, it must depend for its execution, as to such stipulations, on a law or laws to be passed by Congress, and it is the constitutional right and duty of the House of Representatives, in all such cases, to deliberate on the expediency or inexpediency of carrying such treaty into effect, and to determine and act thereon, as in their judgment may be most conducive to the public good.

*Resolved*, That it is not necessary to the propriety of any application from this House to the Executive for information desired by them, and which may relate to any constitutional functions of the House, that the purposes for which such information may be wanted, or to which the same may be applied, should be stated in the application.

pressed upon me an instinct that is sure. On a question of shame and honor, reasoning is sometimes useless, and worse. I feel the decision in my pulse—if it throws no light upon the brain, it kindles a fire at the heart.

It is not easy to deny, it is impossible to doubt, that a treaty imposes an obligation on the American nation. It would be childish to consider the President and Senate obliged, and the nation and the House free. What is the obligation—perfect or imperfect? If perfect, the debate is brought to a conclusion. If imperfect, how large a part of our faith is pawned? Is half our honor put at risk, and is that half too cheap to be redeemed? How long has this hair-splitting subdivision of good faith been discovered, and why has it escaped the researches of the writers on the law of nations? Shall we add a new chapter to that law, or insert this doctrine as a supplement to, or more properly a repeal of the ten commandments?

The principles and the example of the British Parliament have been alleged to coincide with the doctrine of those who deny the obligation of the treaty. I have not had the health to make very laborious researches into this subject. I will, however, sketch my view of it. Several instances have been noticed, but the treaty of Utrecht is the only one that seems to be at all applicable. It has been answered, that the conduct of Parliament in that celebrated example, affords no sanction to our refusal to carry the treaty into effect. The obligation of the treaty of Utrecht has been understood to depend on the concurrence of Parliament, as a condition to its becoming of force. If that opinion should, however, appear incorrect, still the precedent proves, not that the treaty of Utrecht wanted obligation, but that Parliament disregarded it; a proof, not of the construction of the treaty-making power, but of the violation of a national engagement. Admitting still further, that the Parliament claimed and exercised its power, not as a breach of faith, but as a matter of constitutional right, I reply, that the analogy between Parliament and Congress totally fails. The nature of the British government may require and justify a course of proceeding in respect to treaties, that is unwarrantable here.

The British government is a mixed one. The king, at the head of the army, of the hierarchy, with an ample civil list, hereditary, irresponsible, and possessing the prerogative of peace and war, may be properly observed with some jealousy in respect to the exercise of the treaty-making power. It seems, and perhaps from a spirit of caution on this account, to be their doctrine, that treaties bind the nation, but are not to be regarded by the courts of law, until laws have been passed conformably to them. Our concurrence has expressly regulated the matter differently. The concurrence of Parliament is necessary to treaties becoming laws in England, gentlemen say; and here the Senate, representing the States, must concur in treaties.

The constitution and the reason of the case, make the concurrence of the Senate as effectual as the sanction of Parliament, and why not? The Senate is an elective body, and the approbation of a majority of the States affords the nation as ample security against the abuse of the treaty-making power, as the British nation can enjoy in the control of Parliament.

Whatever doubt there may be as to the Parliamentary doctrine of the obligation of treaties in Great Britain, (and perhaps there is some,) there is none in their books, or their modern practice. Blackstone represents treaties as of the highest obligation, when ratified by the king; and for almost a century, there has been no instance of opposition by Parliament to this doctrine. Their treaties have been uniformly carried into effect, although many have been ratified, of a nature most obnoxious to party, and have produced louder clamor than we have lately witnessed. The example of England, therefore, fairly examined, does not warrant, it dissuades us from a negative vote.

Gentlemen have said, with spirit, whatever the true doctrine of our constitution may be, Great Britain has no right to complain or to dictate an interpretation. The sense of the American nation as to the treaty power, is to be received by all foreign nations. This is very true as a maxim; but the fact is against those who vouch it. The sense of the American nation is not as the vote of the House has declared it. Our claim to some agency in giving force and obligation to treaties, is beyond all kind of controversy novel. The sense of the nation is probably against it. The sense of the government certainly is. The President denies it on constitutional grounds, and therefore cannot ever accede to our interpretation. The Senate ratified the treaty, and cannot without dishonor adopt it, as I have attempted to show. Where then do they find the proof that this is the American sense of the treaty-making power, which is to silence the murmurs of Great Britain? Is it because a majority of two or three, or at most, of four or five of this House, will reject the treaty? Is it thus the sense of our nation is to be recognized? Our government may thus be stopped in its movements—a struggle for power may thus commence, and the event of the conflict may decide who is the victor, and the quiet possessor of the treaty power. But at present it is beyond all credibility that our vote, by a bare majority, should be believed to do any thing better than to embitter our divisions, and to tear up the settled foundations of our departments.

If the obligation of a treaty be complete, I am aware that cases sometimes exist which will justify a nation in refusing a compliance. Are our liberties, gentlemen demand, to be bartered away by a treaty—and is there no remedy? There is. Extremes are not to be supposed, but when they happen, they make the law for themselves. No such extreme can be pretended in this instance, and if it existed,

the authority it would confer to throw off the obligation, would rest where the obligation itself resides—in the nation. This House is not the nation—it is not the whole delegated authority of the nation. Being only a part of that authority, its right to act for the whole society obviously depends on the concurrence of the other two branches. If they refuse to concur, a treaty, once made, remains in full force, although a breach on the part of a foreign nation would confer upon our own a right to forbear the execution. I repeat it, even in that case the act of this House cannot be admitted as the act of the nation, and if the President and Senate should not concur, the treaty would be obligatory.

I put a case that will not fail to produce conviction. Our treaty with France engages that free bottoms shall make free goods, and how has it been kept? As such engagements will ever be in time of war. France has set it aside, and pleads imperious necessity. We have no navy to enforce the observance of such articles, and paper barriers are weak against the violence of those who are on the scramble for enemies' goods on the high seas. The breach of any article of a treaty by one nation gives an undoubted right to the other to renounce the whole treaty. But has one branch of the government that right, or must it reside with the whole authority of the nation? What if the Senate should resolve that the French treaty is broken, and therefore null and of no effect? The answer is obvious, you would deny their sole authority. That branch of the legislature has equal power in this regard with the House of Representatives. One branch alone cannot express the will of the nation.

A right to annul a treaty because a foreign nation has broken its articles, is only like the case of a sufficient cause to repeal a law. In both cases the branches of our government must concur in the orderly way, or the law and the treaty will remain.

The very cases supposed by my adversaries in this argument, conclude against themselves. They will persist in confounding ideas that should be kept distinct, they will suppose that the House of Representatives has no power unless it has all power. The House is nothing if it be not the whole government—the nation.

On every hypothesis, therefore, the conclusion is not to be resisted; we are either to execute this treaty, or break our faith.

To expatiate on the value of public faith may pass with some men for declamation—to such men I have nothing to say. To others I will urge—can any circumstance mark upon a people more turpitude and debasement? Can any thing tend more to make men think themselves mean, or degrade to a lower point their estimation of virtue, and their standard of action?

It would not merely demoralize mankind, it tends to break all the ligaments of society, to dissolve that mysterious charm which attracts

individuals to the nation, and to inspire in its stead a repulsive sense of shame and disgust.

What is patriotism? Is it a narrow affection for the spot where a man was born? Are the very clods where we tread entitled to this ardent preference because they are greener? No, sir, this is not the character of the virtue, and it soars higher for its object. It is an extended self-love, mingling with all the enjoyments of life, and twisting itself with the minutest filaments of the heart. It is thus we obey the laws of society, because they are the laws of virtue. In their authority we see, not the array of force and terror, but the venerable image of our country's honor. Every good citizen makes that honor his own, and cherishes it not only as precious, but as sacred. He is willing to risk his life in its defence, and is conscious that he gains protection while he gives it. For, what rights of a citizen will be deemed inviolable when a state renounces the principles that constitute their security? Or if his life should not be invaded, what would its enjoyments be in a country odious in the eyes of strangers and dishonored in his own? Could he look with affection and veneration to such a country as his parent? The sense of having one would die within him; he would blush for his patriotism, if he retained any, and justly, for it would be a vice. He would be a banished man in his native land.

I see no exception to the respect that is paid among nations to the law of good faith. If there are cases in this enlightened period when it is violated, there are none when it is decried. It is the philosophy of politics, the religion of governments. It is observed by barbarians—a whiff of tobacco smoke, or a string of beads, gives not merely binding force, but sanctity to treaties. Even in Algiers, a truce may be bought for money, but when ratified, even Algiers is too wise, or too just, to disown and annul its obligation. Thus we see, neither the ignorance of savages, nor the principles of an association for piracy and rapine, permit a nation to despise its engagements. If, sir, there could be a resurrection from the foot of the gallows, if the victims of justice could live again, collect together and form a society, they would, however loath, soon find themselves obliged to make justice, that justice under which they fell, the fundamental law of their state. They would perceive it was their interest to make others respect, and they would therefore soon pay some respect themselves to the obligations of good faith.

It is painful, I hope it is superfluous, to make even the supposition, that America should furnish the occasion of this opprobrium. No, let me not even imagine, that a republican government, sprung, as our own is, from a people enlightened and uncorrupted, a government whose origin is right, and whose daily discipline is duty, can, upon solemn debate, make its option to be faithless—can dare to act what despots dare not avow, what our own example



evinces, the states of Barbary are unsuspected of. No, let me rather make the supposition, that Great Britain refuses to execute the treaty, after we have done every thing to carry it into effect. Is there any language of reproach pungent enough to express your commentary on the fact? What would you say, or rather, what would you not say? Would you not tell them, wherever an Englishman might travel, shame would stick to him—he would disown his country. You would exclaim, England, proud of your wealth, and arrogant in the possession of power—blush for these distinctions, which become the vehicles of your dishonor. Such a nation might truly say to corruption, thou art my father, and to the worm, thou art my mother and my sister. We should say of such a race of men, their name is a heavier burden than their debt.

I can scarcely persuade myself to believe, that the consideration I have suggested requires the aid of any auxiliary. But, unfortunately, auxiliary arguments are at hand. Five millions of dollars, and probably more, on the score of spoiliations committed on our commerce, depend upon the treaty. The treaty offers the only prospect of indemnity. Such redress is promised as the merchants place some confidence in. Will you interpose and frustrate that hope, leaving to many families nothing but beggary and despair? It is a smooth proceeding to take a vote in this body: it takes less than half an hour to call the yeas and nays and reject the treaty. But what is the effect of it? What, but this: the very men, formerly so loud for redress; such fierce champions, that even to ask for justice was too mean and too slow, now turn their capricious fury upon the sufferers, and say, by their vote, to them and their families, no longer eat bread; petitioners, go home and starve, we cannot satisfy your wrongs and our resentments.

Will you pay the sufferers out of the treasury? No. The answer was given two years ago, and appears on our journals. Will you give them letters of marque and reprisal to pay themselves by force? No, that is war. Besides, it would be an opportunity for those who have already lost much to lose more. Will you go to war to avenge their injury? If you do, the war will leave you no money to indemnify them. If it should be unsuccessful, you will aggravate existing evils; if successful, your enemy will have no treasure left to give our merchants: the first losses will be confounded with much greater and be forgotten. At the end of a war there must be a negotiation, which is the very point we have already gained; and why relinquish it? And who will be confident that the terms of the negotiation, after a desolating war, would be more acceptable to another House of Representatives than the treaty before us. Members and opinions may be so changed, that the treaty would then be rejected for being what the present majority say it should be. Whether we shall go on

making treaties and refusing to execute them, I know not. Of this I am certain, it will be very difficult to exercise the treaty-making power on the new principles, with much reputation or advantage to the country.

The refusal of the posts, (inevitable if we reject the treaty,) is a measure too decisive in its nature to be neutral in its consequences. From great causes we are to look for great effects. A plain and obvious one will be, the price of the western lands will fall. Settlers will not choose to fix their habitation on a field of battle. Those who talk so much of the interest of the United States, should calculate how deeply it would be affected by rejecting the treaty; how vast a tract of wild land will almost cease to be property. This loss, let it be observed, will fall upon a fund expressly devoted to sink the national debt. What, then, are we called upon to do? However the form of the vote and the protestations of many may disguise the proceeding, our resolution is in substance, and it deserves to wear the title of a resolution to prevent the sale of the western lands and the discharge of the public debt.

Will the tendency to Indian hostilities be contested by any one? Experience gives the answer. The frontiers were scourged with war till the negotiation with Great Britain was far advanced, and then the state of hostility ceased. Perhaps the public agents of both nations are innocent of fomenting the Indian war, and perhaps they are not. We ought not, however, to expect that neighboring nations, highly irritated against each other, will neglect the friendship of the savages; the traders will gain an influence and will abuse it; and who is ignorant that their passions are easily raised, and hardly restrained from violence? Their situation will oblige them to choose between this country and Great Britain, in case the treaty should be rejected. They will not be our friends, and at the same time the friends of our enemies.

But am I reduced to the necessity of proving this point? Certainly the very men who charged the Indian war on the detention of the posts, will call for no other proof than the recital of their own speeches. It is remembered with what emphasis, with what acrimony, they expatiated on the burden of taxes, and the drain of blood and treasure into the western country, in consequence of Britain's holding the posts. Until the posts are restored, they exclaimed, the treasury and the frontiers must bleed.

If any, against all these proofs, should maintain that the peace with the Indians will be stable without the posts, to them I will urge another reply. From arguments calculated to produce conviction, I will appeal directly to the hearts of those who hear me, and ask, whether it is not already planted there? I resort especially to the convictions of the western gentlemen, whether, supposing no posts and no treaty, the settlers will remain in security? Can they take it upon them to say that an In-



dian peace, under these circumstances, will prove firm? No, sir, it will not be peace, but a sword: it will be no better than a lure to draw victims within the reach of the tomahawk.

On this theme my emotions are unutterable. If I could find words for them, if my powers bore any proportion to my zeal, I would swell my voice to such a note of remonstrance, it should reach every log-house beyond the mountains. I would say to the inhabitants, Wake from your false security; your cruel dangers, your more cruel apprehensions are soon to be renewed: the wounds, yet unhealed, are to be torn open again; in the day time your path through the woods will be ambushed; the darkness of midnight will glitter with the blaze of your dwellings. You are a father—the blood of your sons shall fatten your corn-fields: you are a mother—the warwhoop shall wake the sleep of the cradle.

On this subject you need not suspect any deception on your feelings. It is a spectacle of horror which cannot be overdrawn. If you have nature in your hearts, it will speak a language, compared with which all I have said or can say will be poor and frigid.

Will it be whispered that the treaty has made me a new champion for the protection of the frontiers? It is known that my voice as well as vote have been uniformly given in conformity with the ideas I have expressed. Protection is the right of the frontiers; it is our duty to give it.

Who will accuse me of wandering out of the subject? Who will say that I exaggerate the tendencies of our measures? Will any one answer by a sneer, that all this is idle preaching? Will any one deny that we are bound, and I would hope to good purpose, by the most solemn sanctions of duty for the vote we give? Are despots alone to be reproached for unfeeling indifference to the tears and blood of their subjects? Are republicans irresponsible? Have the principles, on which you ground the reproach upon cabinets and kings, no practical influence, no binding force? Are they merely themes of idle declamation, introduced to decorate the morality of a newspaper essay, or to furnish pretty topics of harangue from the windows of that State-house? I trust it is neither too presumptuous nor too late to ask: Can you put the dearest interests of society at risk without guilt and without remorse?

It is vain to offer as an excuse, that public men are not to be reproached for the evils that may happen to ensue from their measures. This is very true, where they are unforeseen or inevitable. Those I have depicted are not unforeseen; they are so far from inevitable, we are going to bring them into being by our vote. We choose the consequences, and become as justly answerable for them as for the measure that we know will produce them.

By rejecting the posts, we light the savage fires, we bind the victims. This day we under-

take to render account to the widows and orphans whom our decision will make, to the wretches that will be roasted at the stake, to our country, and I do not deem it too serious to say, to conscience and to God. We are answerable, and if duty be any thing more than a word of imposture, if conscience be not a bugbear, we are preparing to make ourselves as wretched as our country.

There is no mistake in this case, there can be none. Experience has already been the profit of events, and the cries of our future victims have already reached us. The western inhabitants are not a silent and uncomplaining sacrifice. The voice of humanity issues from the shade of their wilderness. It exclaims, that while one hand is held up to reject this treaty, the other grasps a tomahawk. It summons our imagination to the scenes that will open. It is no great effort of the imagination to conceive, that events so near are already begun. I can fancy that I listen to the yells of savage vengeance, and the shrieks of torture. Already they seem to sigh in the west wind—already they mingle with every echo from the mountains.

It is not the part of prudence to be inattentive to the tendencies of measures. Where there is any ground to fear that these will be pernicious, wisdom and duty forbid that we should underrate them. If we reject the treaty, will our peace be as safe as if we executed it with good faith? I do honor to the intrepid spirit of those who say it will. It was formerly understood to constitute the excellence of a man's faith to believe without evidence and against it.

But as opinions on this article are changed, and we are called to act for our country, it becomes us to explore the dangers that will attend its peace, and to avoid them if we can.

Few of us here, and fewer still in proportion of our constituents, will doubt, that, by rejecting, all those dangers will be aggravated.

The idea of war is treated as a bugbear. This levity is at least unseasonable, and most of all unbecoming some who resort to it.

Who has forgotten the philippics of 1794? The cry then was reparation—no envoy—no treaty—no tedious delays. Now, it seems, the passion subsides, or at least the hurry to satisfy it. Great Britain, say they, will not wage war upon us.

In 1794, it was urged by those, who now say, no war, that if we built frigates, or resisted the piracies of Algiers, we could not expect peace. Now they give excellent comfort truly. Great Britain has seized our vessels and cargoes to the amount of millions; she holds the posts; she interrupts our trade, say they, as a neutral nation; and these gentlemen, formerly so fierce for redress, assure us, in terms of the sweetest consolation, Great Britain will bear all this patiently. But let me ask the late champions of our rights, will our nation bear it? Let others exult because the aggressor will let our

wrongs sleep for ever. Will it add, it is my duty to ask, to the patience and quiet of our citizens to see their rights abandoned? Will not the disappointment of their hopes, so long patronized by the government, now in the crisis of their being realized, convert all their passions into fury and despair?

Are the posts to remain for ever in the possession of Great Britain? Let those who reject them, when the treaty offers them to our hands, say, if they choose, they are of no importance. If they are, will they take them by force? The argument I am urging, would then come to a point. To use force is war. To talk of treaty again is too absurd. Posts and redress must come from voluntary good will, treaty or war.

The conclusion is plain, if the state of peace shall continue, so will the British possession of the posts.

Look again at this state of things. On the sea-coast, vast losses uncompensated: on the frontier, Indian war, actual encroachment on our territory: every where discontent—resentments tenfold more fierce because they will be impotent and humbled: national scorn and abasement.

The disputes of the old treaty of 1783, being left to rankle, will revive the almost extinguished animosities of that period. Wars, in all countries, and most of all in such as are free, arise from the impetuosity of the public feelings. The despotism of Turkey is often obliged by clamor, to unsheathe the sword. War might perhaps be delayed, but could not be prevented. The causes of it would remain, would be aggravated, would be multiplied, and soon become intolerable. More captures, more impressments would swell the list of our wrongs, and the current of our rage. I make no calculation of the arts of those, whose employment it has been, on former occasions, to fan the fire. I say nothing of the foreign money and emissaries that might foment the spirit of hostility, because the state of things will naturally run to violence. With less than their former exertion, they would be successful.

Will our government be able to temper and restrain the turbulence of such a crisis? The government, alas, will be in no capacity to govern. A divided people—and divided councils! Shall we cherish the spirit of peace, or show the energies of war? Shall we make our adversary afraid of our strength, or dispose him, by the measures of resentment and broken faith, to respect our rights? Do gentlemen rely on the state of peace because both nations will be worse disposed to keep it; because injuries, and insults still harder to endure, will be mutually offered?

Such a state of things will exist, if we should long avoid war, as will be worse than war. Peace without security, accumulation of injury without redress, or the hope of it, resentment against the aggressor, contempt for ourselves, intestine discord and anarchy. Worse than

this need not be apprehended, for if worse could happen, anarchy would bring it. Is this the peace, gentlemen undertake with such fearless confidence to maintain? Is this the station of American dignity, which the high-spirited champions of our national independence and honor could endure—nay, which they are anxious and almost violent to seize for the country? What is there in the treaty, that could humble us so low? Are they the men to swallow their resentments, who so lately were choking with them? If in the case contemplated by them, it should be peace, I do not hesitate to declare it ought not to be peace.

Is there any thing in the prospect of the interior state of the country, to encourage us to aggravate the dangers of a war? Would not the shock of that evil produce another, and shake down the feeble and then unbraced structure of our government? Is this a chimaera? Is it going off the ground of matter of fact to say, the rejection of the appropriation proceeds upon the doctrine of a civil war of the departments? Two branches have ratified a treaty, and we are going to set it aside. How is this disorder in the machine to be rectified? While it exists, its movements must stop, and when we talk of a remedy, is that any other than the formidable one of a revolutionary interposition of the people? And is this, in the judgment even of my opposers, to execute, to preserve the constitution and the public order? Is this the state of hazard, if not of convulsion, which they can have the courage to contemplate and to brave, or beyond which their penetration can reach and see the issue? They seem to believe, and they act as if they believed, that our union, our peace, our liberty are invulnerable and immortal—as if our happy state was not to be disturbed by our dissensions, and that we are not capable of falling from it by our unworthiness. Some of them have no doubt better nerves and better discernment than mine. They can see the bright aspects and happy consequences of all this array of horrors. They can see intestine discords, our government disorganized, our wrongs aggravated, multiplied and unredressed, peace with dishonor, or war without justice, union, or resources, in “the calm lights of mild philosophy.”

But whatever they may anticipate as the next measure of prudence and safety, they have explained nothing to the House. After rejecting the treaty, what is to be the next step? They must have foreseen what ought to be done, they have doubtless resolved what to propose. Why, then, are they silent? Dare they not avow their plan of conduct, or do they wait till our progress towards confusion shall guide them in forming it?

Let me cheer the mind, weary, no doubt, and ready to despond on this prospect, by presenting another, which it is yet in our power to realize. Is it possible for a real American to

look at the prosperity of this country without some desire for its continuance, without some respect for the measures which, many will say, produced, and all will confess, have preserved it? Will he not feel some dread that a change of system will reverse the scene? The well-grounded fears of our citizens in 1794, were removed by the treaty, but are not forgotten. Then they deemed war nearly inevitable, and would not this adjustment have been considered, at that day, as a happy escape from the calamity? The great interest and the general desire of our people, was to enjoy the advantages of neutrality. This instrument, however misrepresented, affords America that inestimable security. The causes of our disputes are either cut up by the roots, or referred to a new negotiation after the end of the European war. This was gaining every thing, because it confirmed our neutrality, by which our citizens are gaining every thing. This alone would justify the engagements of the government. For, when the fiery vapors of the war lowered in the skirts of our horizon, all our wishes were concentrated in this one, that we might escape the desolation of the storm. This treaty, like a rainbow on the edge of the cloud, marked to our eyes the space where it was raging, and afforded, at the same time, the sure prognostic of fair weather. If we reject it, the vivid colors will grow pale, it will be a baleful meteor, portending tempest and war.

Let us not hesitate, then, to agree to the appropriation to carry it into faithful execution. Thus we shall save the faith of our nation, secure its peace, and diffuse the spirit of confidence and enterprise, that will augment its prosperity. The progress of wealth and improvement is wonderful, and some will think, too rapid. The field for exertion is fruitful and vast, and if peace and good government should be preserved, the acquisitions of our citizens

are not so pleasing as the proofs of their industry, as the instruments of their future success. The rewards of exertion go to augment its power. Profit is every hour becoming capital. The vast crop of our neutrality is all seed-wheat, and is sown again to swell, almost beyond calculation, the future harvest of prosperity. And in this progress, what seems to be fiction is found to fall short of experience.

I rose to speak under impressions that I would have resisted if I could. Those who see me will believe, that the reduced state of my health has unfitted me, almost equally, for much exertion of body or mind. Unprepared for debate, by careful reflection in my retirement, or by long attention here, I thought the resolution I had taken to sit silent, was imposed by necessity, and would cost me no effort to maintain. With a mind thus vacant of ideas, and sinking, as I really am, under a sense of weakness, I imagined the very desire of speaking was extinguished by the persuasion that I had nothing to say. Yet when I come to the moment of deciding the vote, I start back with dread from the edge of the pit into which we are plunging. In my view, even the minutes I have spent in expostulation have their value, because they protract the crisis, and the short period in which alone we may resolve to escape it.

I have thus been led by my feelings to speak more at length than I had intended. Yet I have, perhaps, as little personal interest in the event as any one here. There is, I believe, no member who will not think his chance to be a witness of the consequences greater than mine. If, however, the vote should pass to reject, and a spirit should rise, as it will, with the public disorders, to make confusion worse confounded, even I, slender and almost broken as my hold upon life is, may outlive the government and constitution of my country.

## JOHN RUTLEDGE.

ABOUT the year 1735, Doctor John Rutledge and his brother arrived in South Carolina, where they commenced the practice of their professions; one as a physician, the other as a counsellor and advocate at law. Dr. Rutledge was married to Miss Hext, who in the fifteenth year of her age gave birth to the illustrious subject of this memoir. Shortly after this period Doctor Rutledge died, and the young child was left to the sole guardianship of its mother. Pursuing his elementary studies under the supervision of one of the most efficient and successful of South Carolina's early instructors, and after he had made some progress in the classics, Mr. Rutledge entered the law office of James Parsons. Soon after he went to England and studied in the Temple, from which place he returned to Charleston in 1761, and commenced practice. One of the first causes in which he was engaged, originated his reputation as an orator and a pleader of extraordinary talent. Instead of rising gradually to the foremost position in his profession, he burst forth at once the able lawyer and the accomplished orator. His professional engagements became numerous, and the client who was so fortunate as to obtain his services, was thought to be in a fair way to gain his cause.

In the controversy during the year 1764, consequent upon the refusal of Governor Boone to administer to Christopher Gadsden\* the oaths usual in installing members of the House of Assembly, Mr. Rutledge took a decided stand against that "assumption of power," and in an eloquent appeal, roused the Assembly and the people to resist all interferences of royal governors. In this resistance "Rutledge kindled a spark which has never since been extinguished." The proposition of the Massachusetts Assembly, at the time of the stamp act excitement, to the assemblies of the different provinces, to meet for consultation "on the present circumstances of the colonies, and the difficulties to which they are and must be reduced by the operation of the acts of Parliament," was warmly advocated by Mr. Rutledge, and in 1765 he took his seat in the first Congress at New York. In this assembly, wherein was generated the spirit of union, and the independence of the colonies, Mr. Rutledge distinguished himself as much by the force of his reasoning as by the splendor of his eloquence. The delegates from the other provinces were astonished at the young rhetorician, and the impressions he left on their minds produced a favorable opinion of the colony from which he came.

Of the Congress which convened at Philadelphia in 1774, Mr. Rutledge was a member. Previous to his election to this assembly, there was much difference of opinion expressed by the people of South Carolina, in reference to the extent of the pledges which were to be made by that province to the Bostonians, and a proposition was offered to instruct the delegates how far to support them. This motion was opposed by Mr. Rutledge in an eloquent and masterly speech, demonstrating that any thing less than unlimited powers would be unequal to the crisis. In this effort he was successful. The delegates were invested with full authority to concur in whatever course they should think expedient, and their subsequent conduct fully justified the

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\* Christopher Gadsden was born in Charleston, in 1724. He was educated in England, where he became accomplished in the learned languages. He returned to America at the age of sixteen, and entered the counting-house of a merchant in

confidence reposed in them. Mr. Rutledge remained in Congress until 1776, when he returned to Charleston and was elected President and Commander-in-Chief of South Carolina, under the republican constitution established by the people on the twenty-sixth of March of that year. On the third of April following, the Legislative Council and House of Assembly presented a joint address to President Rutledge, in which they set forth their reasons for assuming the powers of government. "When we reflect," said they, "upon the unprovoked, cruel, and accumulated oppressions under which America in general, and this colony in particular, has long continued; oppressions which, gradually increasing in injustice and violence, are now, by inexorable tyranny, perpetrated against the United Colonies, under the various forms of robbery, conflagrations, massacre, breach of public faith, and open war; conscious of our natural and unalienable rights, and determined to make every effort in our power to retain them, we see your Excellency's elevation from the midst of us, to govern this country, as the natural consequence of such outrages.

"By the suffrages of a free people, sir, you have been chosen to hold the reins of government, an event as honorable to yourself as beneficial to the public. We firmly trust that you will make the constitution the great rule of your conduct; and in the most solemn manner we do assure your Excellency that, in the discharge of your duties, under that constitution which looks forward to an accommodation with Great Britain, (an event which, though traduced and treated as rebels, we still earnestly desire,) we will support you with our lives and fortunes."

President Rutledge's answer to this firm and decisive address, evinces a spirit of the loftiest patriotism and self-sacrifice. "My most cordial thanks are due," says he, "and I request that you will accept them, for this solemn engagement of support, in discharging the duty of the honorable station to which, by your favor, I have been elected.

"Be persuaded, that no man would embrace a just and equitable accommodation with Great Britain more gladly than myself; but, until so desirable an object can be obtained, the defence of my country, and preservation of that constitution which, from a perfect knowledge of the rights, and a laudable regard to the happiness of the people, you have so wisely framed, shall engross my whole attention. To this country I owe all that is dear and valuable, and would, with the greatest pleasure, sacrifice every temporal felicity to establish and perpetuate her freedom."

From this time he employed himself in arranging the affairs of the State, and particularly in preparing for her defence against an expected invasion by the British. Late in June (1776), General Sir Henry Clinton and Sir Peter Parker, with a powerful fleet and army, attempted the reduction of Charleston. After an engagement of over ten hours with the Americans, in the fort on Sullivan's Island, they were repulsed. On this occasion President Rutledge rendered signal service to his country. General Lee, who commanded the continental troops, pronounced Sullivan's Island to be a "slaughter pen," and was disposed to give orders for its evacuation. To prevent this unwise course, the following laconic note was sent to General Moultrie, a short time before the attack was made by the British: "General Lee wishes you to evacuate the fort. You will not without an order from me. I would sooner cut off my hand than write one.—J. RUTLEDGE."

In March, 1778, President Rutledge resigned his office, and was soon after elected Governor,

Philadelphia, in which position he remained until he was twenty-one years of age. He then went to England, and on his return engaged in mercantile pursuits in Charleston.

Mr. Gadsden was one of the earliest opponents of Great Britain in South Carolina, and, as the revolution advanced, was one of its firmest supporters. This circumstance caused the refusal of Gov. Boone to qualify him for his position in the assembly. He was a delegate in the first Continental Congress in 1774, and his name is attached to the *American Association* agreed to by that body. In 1775 he was elected senior colonel and commandant of three South Carolina regiments, and was subsequently made a brigadier. He was in the engagement at the siege of Charleston in 1776. He was one of the framers of the Constitution of South Carolina, adopted in 1778. He resigned his commission in 1779, and when Charleston was taken by Clinton, in 1780, he was lieutenant-governor; as such, he signed the capitulation. Three months afterward he was taken, with others, and cast into the loathsome prison at St. Augustine. There he suffered for eleven months, until exchanged in June, 1781, when he sailed to Philadelphia with other prisoners. He returned to Charleston, and was a member of the assembly convened at Jacksonburg in the winter of 1782. He opposed the confiscation of the property of the loyalists, and thereby won their esteem. He was elected governor of the State in 1782, but declined the honor, and went into the retirement of private life. He died on the twenty-eighth of August, 1805, at the age of eighty-one years.

under a new constitution. His exertions in this position were untiring and important. On the termination of his executive duties in 1782, he was elected to Congress, where he remained until the next year. "In this period," says Dr. Ramsay, "he was called upon to perform an extraordinary duty. The surrender of Lord Cornwallis, in October, 1781, seemed to paralyze the exertions of the States. Thinking the war and all its dangers past, they no longer acted with suitable vigor. Congress, fearing that this state of affairs would encourage Great Britain to recommence hostilities, sent deputations of their members to arouse the States to a sense of their danger and duty. On the twenty-second of May, 1782, John Rutledge and George Clymer\* were sent in this capacity, and instructed 'to make such representations to the several States southward of Philadelphia, as were best adapted to their respective circumstances and the present situation of public affairs, as might induce them to carry the requisitions of Congress into effect with the greatest dispatch.' They were permitted to make a personal address to the Virginia Assembly. In the execution of this duty, Mr. Rutledge drew such a picture of the United States, and of the danger to which they were exposed by the backwardness of the particular States to comply with the requisitions of Congress, as produced a very beneficial effect. The orator acquitted himself with so much ability, that the Virginians, who, not without reason, are proud of their statesmen and orators, began to doubt whether their Patrick Henry or the Carolina Rutledge was the most accomplished speaker." Shortly after this period, Mr. Rutledge was appointed Minister from the United States to Holland, but declined the office. In the year 1784 he was elected Judge of the Court of Chancery in South Carolina, and afterwards was appointed, by President Washington, to the bench of the Supreme Court of the United States, in which office he remained until 1791, when he was elected Chief Justice of his native State. In the several public stations to which Judge Rutledge was elevated, he displayed the greatest ability and the highest qualities of statesmanship. He died in July, 1800. "While Massachusetts boasts of her John Adams," says Dr. Ramsay—"Connecticut of her Ellsworth—New York of her Jay—Pennsylvania of her Wilson—Delaware of her Bayard—Virginia of her Henry—South Carolina rests her claims on the talents and eloquence of John Rutledge."



#### SPEECH TO THE SOUTH CAROLINA ASSEMBLY.

This speech was delivered by President Rutledge, to the Legislative Council and House of Assembly of South Carolina, at Charleston, on the eleventh of April, 1776.

\* George Clymer was born at Philadelphia, in 1739. He was among the first to resist the oppressors of his country, and proclaim to his fellow-citizens the principles of liberty. In 1773 he opposed the sale of tea sent out by the British government. In 1775 he became one of the first continental treasurers, and was very efficient in raising funds and supplies for the army. As a member of the Continental Congress, in the next year he signed the Declaration of Independence. With Robert Morris he co-operated in the establishment of the Bank of North America. After the adoption of the Federal Constitution, he was again a member of Congress. In 1796 he was sent to Georgia, to negotiate with Hawkins and Pickens a treaty with the Cherokee and Creek Indians. He was afterwards the president of the Philadelphia bank, and of the Academy of Fine Arts. In the various stations he filled, he was remarkable for the punctual and conscientious discharge of duty. He died on the twenty-third of January, 1818, at Morrisville, Bucks County, Penn.

HONORABLE GENTLEMEN OF THE LEGISLATIVE COUNCIL—MR. SPEAKER AND GENTLEMEN OF THE GENERAL ASSEMBLY: It has afforded me much satisfaction to observe, that though the season of the year rendered your sitting very inconvenient, your private concerns, which must have suffered greatly by your long and close application, in the late Congress, to the affairs of the colony, requiring your presence in the county, yet continuing to prefer the public weal to ease and retirement, you have been busily engaged in framing such laws as our peculiar circumstances rendered absolutely necessary to be passed before your adjournment. Having given my assent to them, I presume you are now desirous of a recess.

On my part, a most solemn oath has been taken for the faithful discharge of my duty; on yours, a solemn assurance has been given to support me therein. Thus, a public compact between us stands recorded. You may rest assured that I shall keep this oath ever in mind—the constitution shall be the invariable rule of my conduct—my ears shall be always

open to the complaints of the injured, justice, in mercy, shall neither be denied, or delayed. Our laws and religion, and the liberties of America, shall be maintained and defended, to the utmost of my power. I repose the most perfect confidence in your engagement.

And now, gentlemen, let me entreat that you will, in your several parishes and districts, use your influence and authority to keep peace and good order, and procure strict observance of, and ready obedience to the law. If any persons therein are still strangers to the nature and merits of the dispute between Great Britain and the colonies, you will explain it to them fully, and teach them, if they are so unfortunate as not to know their inherent rights. Prove to them, that the privileges of being tried by a jury of the vicinage, acquainted with the parties and witnesses; of being taxed only with their own consent, given by their representatives, freely chosen by, and sharing the burden equally with themselves, not for the aggrandizing a rapacious minister, and his dependent favorites, and for corrupting the people, and subverting their liberties, but for such wise and salutary purposes, as they themselves approve; and of having their internal polity regulated, only by laws consented to by competent judges of what is best adapted to their situation and circumstances, equally bound too by those laws, are inestimable, and derived from that constitution, which is the birth-right of the poorest man, and the best inheritance of the most wealthy. Relate to them the various, unjust and cruel statutes, which the British parliament, claiming a right to make laws for binding the colonies in all cases whatsoever, have enacted; and the many sanguinary measures which have been, and are daily pursued and threatened, to wrest from them those invaluable benefits, and to enforce such an unlimited and destructive claim. To the most illiterate it must appear, that no power on earth can, of right, deprive them of the hardly earned fruits of their honest industry, toil and labor—even to them, the impious attempt to prevent many thousands from using the means of subsistence provided for man by the bounty of his Creator, and to compel them, by famine, to surrender their rights, will seem to call for Divine vengeance. The endeavors, by deceit and bribery, to engage barbarous nations to imbrue their hands in the innocent blood of helpless women and children; and the attempts by fair but false promises, to make ignorant domestics subservient to the most wicked

purposes, are acts at which humanity must revolt.

Show your constituents, then, the indispensable necessity which there was for establishing some mode of government in this colony; the benefits of that, which a full and free representation has established; and that the consent of the people is the origin, and their happiness the end of government. Remove the apprehensions with which honest and well-meaning, but weak and credulous, minds, may be alarmed, and prevent ill impressions by artful and designing enemies. Let it be known that this constitution is but temporary, till an accommodation of the unhappy differences between Great Britain and America can be obtained; and that such an event is still desired by men who yet remember former friendships and intimate connections, though, for defending their persons and properties, they are stigmatized and treated as rebels.

Truth, being known, will prevail over artifice and misrepresentation. In such case no man, who is worthy of life, liberty, or property, will, or can, refuse to join with you, in defending them to the last extremity, disdaining every sordid view, and the mean paltry considerations of private interest and present emolument, when placed in competition with the liberties of millions; and seeing that there is no alternative but absolute, unconditional submission, and the most abject slavery, or a defence becoming men born to freedom, he will not hesitate about the choice. Although superior force may, by the permission of Heaven, lay waste our towns, and ravage our country, it can never eradicate from the breasts of freemen, those principles which are ingrafted in their very nature. Such men will do their duty, neither knowing, nor regarding consequences; but submitting them, with humble confidence, to the omniscient and omnipotent arbiter and director of the fate of empires, and trusting that his Almighty arm, which has been so signally stretched out for our defence, will deliver them in a righteous cause.

The eyes of Europe, nay of the whole world, are on America. The eyes of every other colony are on this; a colony, whose reputation for generosity and magnanimity, is universally acknowledged. I trust, therefore, it will not be diminished by our future conduct, that there will be no civil discord here; and that the only strife amongst brethren will be, who shall do most to serve and to save an oppressed and injured country.

## SPEECH TO THE GENERAL ASSEMBLY.

Governor Rutledge delivered the following speech to the General Assembly of South Carolina, met at Jacksonburgh, in that State, on Friday, the eighteenth day of January, 1782. It evinces his unwearied zeal and attention to the interests of the colonies, and presents a vivid picture of the perfidy, rapine, and cruelty which distinguished the British arms in the Southern campaign.\*

HONORABLE GENTLEMEN OF THE SENATE—MR. SPEAKER AND GENTLEMEN OF THE HOUSE OF REPRESENTATIVES: Since the last meeting of a General Assembly, the good people of this State have not only felt the common calamities of war, but from the wanton and savage manner, in which it has been prosecuted, they have experienced such severities as are unpractised, and will scarcely be credited by civilized nations.

The enemy unable to make any impression on the Northern States, the number of whose inhabitants, and the strength of whose country, had baffled their repeated efforts, turned their views towards the Southern, which a difference of circumstances afforded some expectation of conquering, or at least of greatly distressing. After a long resistance, the reduction of Charleston was effected, by the vast superiority of force with which it had been besieged. The loss of that garrison, as it consisted of the Continental troops of Virginia and the Carolinas, and of a number of militia, facilitated the enemy's march into the country, and their establishment of strong posts in the upper and interior parts of it; and the unfavorable issue of the action near Camden, induced them vainly to imagine, that no other army could be collected which they might not easily defeat. The militia, commanded by the Brigadiers Sumpter and Marion, whose enterprising spirit and unremitted perseverance under many difficulties, are deserving of great applause, harassed and often defeated large parties; but the numbers of those militia were too few to contend effectually with the collected strength of the enemy. Regardless, therefore, of the sacred ties of honor, destitute of the feelings of humanity, and determined to extinguish, if possible, every spark of freedom in this country; they, with the insolent pride of conquerors, gave unbounded scope to the exercises of their tyrannical disposition, infringed their public engagements, and violated the most solemn capitulations; many of our worthiest citizens, were without cause, long and closely confined, some on board of prison ships, and others in

the town and castle of St. Augustine, their properties disposed of at the will and caprice of the enemy, and their families sent to different and distant parts of the continent without the means of support; many who had surrendered as prisoners of war were killed in cold blood; several suffered death in the most ignominious manner, and others were delivered up to savages, and put to tortures, under which they expired; thus, the lives, liberties, and properties of the people were dependent, solely, on the pleasure of British officers, who deprived them of either or all on the most frivolous pretences; Indians, slaves, and a desperate banditti of the most profligate characters, were caressed and employed by the enemy to execute their infamous purposes; devastation and ruin marked their progress and that of their adherents, nor were their violences restrained by the charms or influence of beauty and innocence; even the fair sex, whom it is the duty of all, and the pleasure and pride of the brave to protect, they and their tender offspring were victims to the inveterate malice of an unrelenting foe; neither the tears of mothers nor the cries of infants could excite in their breasts pity or compassion; not only the peaceful habitation of the widow, the aged, and the infirm, but the holy temples of the Most High were consumed, in flames kindled by their sacrilegious hands; they have tarnished the glory of the British arms, disgraced the profession of a soldier, and fixed indelible stigmas of rapine, cruelty, perfidy, and profaneness on the British name. But I can now congratulate you, and I do most cordially on the pleasing change of affairs, which, under the blessing of God, the wisdom, prudence, address, and bravery of the great and gallant General Greene, and the intrepidity of the officers and men under his command have happily effected. A general who is justly entitled, from his many signal services to honorable and singular marks of your approbation and gratitude; his successes have been more rapid and complete than the most sanguine could have expected; the enemy, compelled to surrender or evacuate every post which they held in the country, frequently defeated and driven from place to place, are obliged to seek refuge under the walls of Charleston, and on islands in its vicinity; we have now the full and absolute possession of every other part of the State, and the legislative, executive, and judicial powers are in the free exercise of their respective authorities.

I also most heartily congratulate you on the glorious victory obtained by the combined forces of America and France, over their common enemy: when the very general who was second in command at the reduction of Charleston, and to whose boasted prowess and highly extolled abilities the conquest of no less than

\* This speech was published in the Pennsylvania Packet, of the 14th of March, 1782.



three States had been arrogantly committed, was speedily compelled to accept of the same mortifying terms which had been imposed on that brave but unfortunate garrison: to surrender an army of many thousand regulars, and to abandon his wretched followers, whom he had artfully seduced from their allegiance by specious promises of protection, which he could never have hoped to fulfil, to the justice or mercy of their country, on the naval superiority established by the illustrious ally of the United States—a superiority in itself so decided, and in its consequences so extensive, as must inevitably soon oblige the enemy to yield to us the only post which they occupy in this State: and on the reiterated proofs of the sincerest friendship, and on the great support which America has received from that powerful monarch—a monarch whose magnanimity is universally acknowledged and admired, and on whose royal word we may confidently rely for every necessary assistance: on the perfect harmony which subsists between France and America: on the stability which her independence has acquired, and the certainty that it is too deeply rooted ever to be shaken; for animated as they are by national honor, and united by one common interest, it must and will be maintained.

What may be the immediate effects on the British nation, of the events which I have mentioned, of their loss of territory in other parts of the world, and of their well-founded apprehensions from the powers of France, Spain, and Holland, it is impossible to foretell. If experience can teach wisdom to a haughty and infatuated people, and if they will now be governed by reason, they will have learnt they can have no solid ground of hope to conquer any State in the Union; for though their armies have obtained temporary advantages over our troops, yet the citizens of these States, firmly resolved as they are never to return to a domination which, near six years ago, they unanimously and justly renounced, cannot be subdued; and they must now be convinced, that it is the height of folly and madness to persist in so ruinous a war. If, however, we judge, as we ought, of their future by their past conduct, we may presume that they will not only endeavor to keep possession of our capital, but make another attempt, howsoever improbable the success of it may appear, to subjugate this country: it is therefore highly incumbent upon us, to use our most strenuous efforts to frustrate so fatal a design; and I earnestly conjure you, by the sacred love which you bear to your country, by the constant remembrance of her bitter sufferings, and by the just detestation of British government which you and your posterity must for ever possess, to exert your utmost faculties for that purpose, by raising and equipping, with all possible expedition, a respectable permanent force, and by making ample provision for their comfortable subsistence. I am sensible the expense will be great;

but a measure so indispensable to the preservation of our freedom is above every pecuniary consideration.

The organization of our militia is likewise a subject of infinite importance: a clear and concise law, by which the burdens of service will be equally sustained, and a competent number of men brought forth and kept in the field, when their assistance may be required, is essential to our security, and therefore justly claims your immediate and serious attention: certain it is, that some of our militia have, upon several occasions, exhibited symptoms of valor which would have reflected honor on veteran troops. The courage and conduct of the generals whom I have mentioned; the cool and determined bravery displayed by Brigadier Pickens, and, indeed, the behavior of many officers and men in every brigade, are unquestionable testimonies of the truth of this assertion. But such behavior cannot be expected from militia in general, without good order and strict discipline; nor can that order and discipline be established, but by a salutary law, steadily executed.

Another important matter for your deliberation, is the conduct of such of our citizens as, voluntarily avowing their allegiance, and even glorying in their professions of loyalty and attachment to his Britannic Majesty, have offered their congratulations on the success of his arms, prayed to be embodied as loyal militia, accepted commissions in his service, or endeavored to subvert our constitution and establish his power in its stead; of those who have returned to this State, in defiance of law, by which such return was declared to be a capital offence, and have bettered the British interest, and of such whose behavior has been so reprehensible, that justice and policy forbid their free re-admission to the rights and privileges of citizens.

The extraordinary lenity of this State has been remarkably conspicuous. Other States have thought it just and expedient to appropriate the property of British subjects to the public use; but we have forborne even to take the profits of the estates of our most implacable enemies. It is with you to determine whether the forfeiture and appropriation of their property should now take place: if such should be your determination, though many of our warmest friends have been reduced for their inflexible attachment to the cause of their country, from opulence to inconceivable distress, and, if the enemy's will and power had prevailed, would have been doomed to indigence and beggary, yet it will redound to the reputation of this State, to provide a becoming support for the families of those whom you may deprive of their property.

The value of paper currency became of late so much depreciated, that it was requisite, under the powers vested in the executive during the recess of the General Assembly, to suspend the laws by which it was made a tender. You will now consider whether it may not be proper

to repeal those laws, and fix some equitable mode for the discharge of debts contracted whilst paper money was in circulation.

In the present scarcity of specie, it would be difficult, if not impracticable, to levy a tax to any considerable amount, towards sinking the public debt, nor will the creditors of the State expect that such a tax should at this time be imposed; but it is just and reasonable, that

all unsettled demands should be liquidated, and satisfactory assurances of payment given to the public creditors.

The interest and honor, the safety and happiness of our country, depend so much on the result of your deliberations, that I flatter myself you will proceed in the weighty business before you with firmness and temper, with vigor, unanimity and despatch.

## JAMES MADISON.

JAMES MADISON was born on the sixteenth of March, 1751, at the dwelling of his maternal grandmother, near the town of Port Royal, on the banks of the Rappahannock, in Virginia. After acquiring the rudiments of a classical education, under the tuition of Donald Robertson, a native of Scotland, and the Reverend Thomas Martin, his parish minister, he entered the college of New Jersey, at Princeton, which was then under the presidency of the "sterling Doctor John Witherspoon." Here he completed his collegiate studies, and in the autumn of 1771, received the degree of bachelor of arts. While at college his health became impaired by too strict application to his studies, and remained delicate and feeble for some years. These infirmities, however, did not deter him from persevering in his literary pursuits. He devoted himself to a systematic and extensive course of reading, somewhat miscellaneous, but principally with reference to the law, although he formed no absolute determination to enter upon its practice; which, Burke says, while it sharpens the wits, does not always enlarge the mind.

Early instilled with the noble principles of civil and religious liberty, he strenuously resisted all forms of cruelty or oppression. He was particularly active in opposing the persecution of the early Baptists in Virginia, who were, in some instances, consigned to jail for violating the law which prohibited preaching by dissenters from the established church. At the beginning of the dispute with Great Britain, he manifested great zeal in the cause of the Americans, and was prevented from taking up arms only by the feeble condition of his health. In the spring of 1776 he was chosen a member of the Virginia legislature, and in 1778 was appointed one of the executive councillors, which place he retained until the next year, when he was elected a delegate to the Continental Congress. Of this body he became an active and leading member, taking a prominent part in many of its important transactions. During the years 1784, 1785, and part of 1786, he was a member of the legislature of his native State, and distinguished himself by his laborious efforts to establish a reform in the federal system. All his energies were devoted to this object. The Virginia legislature appointed him a delegate to the Annapolis Convention, which met in September, 1786, to devise a uniform system of commercial regulations, which should be binding on the whole confederacy when acceded to by all the States. This movement resulted in the recommendation of a convention of delegates from all the States, to be held at Philadelphia, in May, 1787, and finally in the adoption of the Federal Constitution. Of that convention Mr. Madison was one of the most distinguished members. He took a prominent part in the debates, and rendered eminent service in perfecting the constitution as adopted. His notes of those proceedings and debates, published since his death, form an invaluable chapter in the legislative history of the country. Mr. Madison, in his will, dated the fifteenth of April, 1835, thus notices this work: "Considering the peculiarity and magnitude of the occasion which produced the convention at Philadelphia in 1787, the characters who composed it, the constitution which resulted from their deliberations, its effects during the trial of so many years on the people living under it, and the interest it has inspired among the friends of free government, it is not an unreasonable inference that a careful and extended report of the proceedings and discussions of that body, which were with closed doors, by a member who was

constant in his attendance, will be particularly gratifying to the people of the United States, and to all who take an interest in the progress of political science and the cause of true liberty. It is my desire that the report as made by me should be published."

The constitution, on its adoption by the National Convention, was submitted to the several States for ratification. The Virginia Convention assembled for that purpose in June, 1788. Mr. Madison was a member of that body. His speeches were full of power, and evinced a high order of statesmanship. Although opposed by the vehement and torrent-like oratory of Patrick Henry, and the persuasive eloquence of George Mason, he gained his cause: the constitution was adopted, and Virginia entered the Union.

In the interval between the adjournment of the Federal Convention at Philadelphia, and the meeting of the State Committees to sanction it, Mr. Madison was associated with Hamilton and Jay in the production of the celebrated series of essays under the title of *The Federalist*.\* These essays exerted an important influence with the people in favor of the constitution. In April, 1789, he took his seat in the Congress assembled at New York. Here he was continued by re-elections until March, 1797, the close of the administration of Washington. In the proceedings of Congress during this time, he bore an active and important part; addressed the House upon all matters of moment, and in all the leading measures occupied an influential position. He opposed the funding system, the national bank, and other measures of the administration which originated with Hamilton, Secretary of the Treasury; and acted generally with the anti-federalists, who sustained the views of Mr. Jefferson, then Secretary of State. On Mr. Madison's retirement from Congress, in 1797, he was elected to the Virginia legislature, where he distinguished himself by his opposition to the alien and sedition laws which had been passed by the federal party in Congress.

Mr. Jefferson being elected President of the United States in 1801, appointed Mr. Madison to the office of Secretary of State. He remained in that station during the whole of Mr. Jefferson's administration, and in 1809 was himself elected to the presidency. In 1812 Congress declared war against Great Britain. To this measure Mr. Madison reluctantly consented, considering war "only and rarely tolerable as a necessary evil, to be kept off as long, and whenever it takes place, to be closed as soon, as possible." The same year he was re-elected President, and performed his duties during the exigencies of the war with firmness and ability. On the capture of Washington by the British, in 1814, he, with many of the principal officers, was obliged to fly to escape from being made prisoner. After the return of peace, which was consummated by the Treaty of Ghent, in December, 1814, the remainder of his administration was prosperous and tranquil, and when he retired from office the country was flourishing, with a reviving commerce and rapidly increasing manufactures. At the close of his presidency he retired to his estate at Montpelier, Virginia, where he lived until his death, which occurred on the twenty-eighth of June, 1836. On the annunciation of his decease, by President Jackson, to the Senate and House of Representatives, John Quincy Adams, the only surviving ex-president, and then a member of the lower House, delivered the following eloquent tribute to his memory: "It is not without some hesitation and some diffidence, that I have risen to offer, in my own behalf and that of my colleagues upon this floor, and of our common constituents, to join our voice at once of mourning and of exultation, at the event announced to both Houses of Congress by the message from the President of the United States—of mourning at the bereavement which has befallen our common country, by the decease of one of her most illustrious sons; of exultation at the spectacle afforded to the observation of the civilized world, and for the emulation of after times, by the close of a life of usefulness and glory, after forty years of service in trusts of the highest dignity and splendor that a confiding country could bestow, succeeded by twenty years of retirement and private life, not inferior, in the estimation of the virtuous and wise, to the honors of the highest station that ambition can ever attain.

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\* The authorship of the different numbers of this work, Mr. Madison designates in his own copy and in his own handwriting, as follows: Nos. 1, 6, 7, 8, 9, 11, 12, 13, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 59, 60, 61, 65 to 85 inclusive, by *Alexander Hamilton*. Nos. 10, 14, 18, 19, 20, 37 to 58 inclusive, and 62 and 63 by *James Madison*. Nos. 2, 3, 4, 5, 64, by *John Jay*.

"Of the public life of James Madison, what could I say that is not deeply impressed upon the memory and upon the heart of every one within the sound of my voice? Of his private life, what but must meet an echoing shout of applause from every voice within this hall? Is it not, in a pre-eminent degree, by emanations from his mind that we are assembled here as the representatives of the people and States of this Union? Is it not transcendently by his exertions that we all address each other here by the endearing appellation of countrymen and fellow-citizens? Of that band of benefactors of the human race, the founders of the Constitution of the United States, JAMES MADISON is the last who has gone to his reward. Their glorious work has survived them all. They have transmitted the precious bond of union to us, now entirely a succeeding generation to them. May it never cease to be a voice of admonition to us of our duty to transmit the inheritance unimpaired to our children of the rising age."

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THE FEDERAL CONSTITUTION

This speech is composed of several delivered by Mr. Madison, in the Virginia Convention, during the session of that assembly in June, 1788:\*

MR. CHAIRMAN: In what I am about to offer to this assembly, I shall not attempt to make impressions by any ardent professions of zeal for the public welfare. We know that the principles of every man will be, and ought to be judged, not by his professions and declarations, but by his conduct. By that criterion, I wish, in common with every other member, to be judged; and even though it should prove unfavorable to my reputation, yet it is a criterion from which I by no means would depart, nor could if I would. Comparisons have been made between the friends of this constitution and those who oppose it. Although I disapprove of such comparisons, I trust that in every thing that regards truth, honor, candor and rectitude of motives, the friends of this system, here and in other States, are not inferior to its opponents. But professions of attachment to the public good, and comparisons of parties, at all times invidious, ought not to govern or influence us now. We ought, sir, to examine the constitution exclusively on its own merits. We ought to inquire whether it will promote the public happiness; and its aptitude to produce that desirable object, ought to be the exclusive subject of our researches. In this pursuit, we ought to address our arguments not to the feelings and passions, but to those understandings and judgments which have been selected, by the people of this country, to decide that great question, by a calm and rational investigation. I hope that gentlemen, in displaying their abilities on this occasion, will, instead of giving opinions and making assertions, condescend to prove and demonstrate, by fair and regular discussion. It gives me pain to hear gentlemen

continually distorting the natural construction of language. Assuredly, it is sufficient if any human production can stand a fair discussion. Before I proceed to make some additions to the reasons which have been adduced by my honorable friend over the way, I must take the liberty to make some observations on what was said by another gentleman, (Mr. Henry.) He told us that this constitution ought to be rejected, because, in his opinion, it endangered the public liberty, in many instances. Give me leave to make one answer to that observation—let the dangers with which this system is supposed to be replete, be clearly pointed out. If any dangerous and unnecessary powers be given to the general legislature, let them be plainly demonstrated, and let us not rest satisfied with general assertions of dangers, without proof, without examination. If powers be necessary, apparent danger is not a sufficient reason against conceding them. He has suggested, that licentiousness has seldom produced the loss of liberty; but that the tyranny of rulers has almost always effected it. Since the general civilization of mankind, I believe there are more instances of the abridgment of the freedom of the people, by gradual and silent encroachments of those in power, than by violent and sudden usurpations: but on a candid examination of history, we shall find that turbulence, violence and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions which, in republics, have more frequently than any other cause, produced despotism. If we go over the whole history of ancient and modern republics, we shall find their destruction to have generally resulted from those causes. If we consider the peculiar situation of the United States, and go to the sources of that diversity of sentiment which pervades its inhabitants, we shall find great danger to fear that the same causes may terminate here in the same fatal effects which they produced in those republics. This danger ought to be wisely guarded against.

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\* See second note at page 18.

In the progress of this discussion, it will perhaps appear, that the only possible remedy for those evils, and the only certain means of preserving and protecting the principles of republicanism, will be found in that very system which is now exclaimed against as the parent of oppression. I must confess that I have not been able to find his usual consistency in the gentleman's arguments on this occasion. He informs us that the people of this country are at perfect repose; that every man enjoys the fruits of his labor peaceably and securely, and that every thing is in perfect tranquillity and safety. I wish sincerely, sir, this were true. But if this be really their situation, why has every State acknowledged the contrary? Why were deputies from all the States sent to the general convention? Why have complaints of national and individual distresses been echoed and re-echoed throughout the continent? Why has our general government been so shamefully disgraced, and our constitution violated? Wherefore have laws been made to authorize a change, and wherefore are we now assembled here? A federal government is formed for the protection of its individual members. Ours was itself attacked with impunity. Its authority has been boldly disobeyed and openly despised. I think I perceive a glaring inconsistency in another of his arguments. He complains of this constitution, because it requires the consent of at least three-fourths of the States to introduce amendments, which shall be necessary for the happiness of the people. The assent of so many, he considers as too great an obstacle to the admission of salutary amendments, which he strongly insists ought to be at the will of a bare majority, and we hear this argument at the very moment we are called upon to assign reasons for proposing a constitution, which puts it in the power of nine States to abolish the present inadequate, unsafe and pernicious confederation! In the first case, he asserts that a majority ought to have the power of altering the government, when found to be inadequate to the security of public happiness. In the last case, he affirms that even three-fourths of the community have not a right to alter a government, which experience has proved to be subversive of national felicity; nay, that the most necessary and urgent alterations cannot be made without the absolute unanimity of all the States. Does not the thirteenth article of the confederation expressly require, that no alteration shall be made without the unanimous consent of all the States? Can any thing in theory be more perniciously improvident and injudicious than this submission of the will of the majority to the most trifling minority? Have not experience and practice actually manifested this theoretical inconvenience to be extremely impolitic? Let me mention one fact, which I conceive must carry conviction to the mind of any one,—the smallest State in the Union has obstructed every attempt to reform the govern-

ment; that little member has repeatedly disobeyed and counteracted the general authority; nay, has even supplied the enemies of its country with provisions. Twelve States had agreed to certain improvements which were proposed, being thought absolutely necessary to preserve the existence of the general government; but as these improvements, though really indispensable, could not, by the confederation, be introduced into it without the consent of every State, the refractory dissent of that little State prevented their adoption. The inconveniences resulting from this requisition of unanimous concurrence in alterations of the confederation, must be known to every member in this convention; it is therefore needless to remind them of them. Is it not self-evident, that a trifling minority ought not to bind the majority? Would not foreign influence be exerted with facility over a small minority? Would the honorable gentleman agree to continue the most radical defects in the old system, because the petty State of Rhode Island would not agree to remove them?

He next objects to the exclusive legislation over the district where the seat of the government may be fixed. Would he submit that the representatives of this State should carry on their deliberations under the control of any one member of the Union? If any State had the power of legislation over the place where Congress should fix the general government, it would impair the dignity, and hazard the safety of Congress. If the safety of the Union were under the control of any particular State, would not foreign corruption probably prevail in such a State, to induce it to exert its controlling influence over the members of the general government? Gentlemen cannot have forgotten the disgraceful insult which Congress received some years ago. And, sir, when we also reflect, that the previous session of particular States is necessary, before Congress can legislate exclusively any where, we must, instead of being alarmed at this part, heartily approve of it.

But the honorable member sees great danger in the provision concerning the militia. Now, sir, this I conceive to be an additional security to our liberties, without diminishing the power of the States in any considerable degree; it appears to me so highly expedient, that I should imagine it would have found advocates even in the warmest friends of the present system. The authority of training the militia and appointing the officers, is reserved to the States. But Congress ought to have the power of establishing a uniform system of discipline throughout the States; and to provide for the execution of the laws, suppress insurrections, and repel invasions. These are the only cases wherein they can interfere with the militia; and the obvious necessity of their having power over them in these cases, must flash conviction on any reflecting mind. Without uniformity of discipline, military bodies would be incapable of action; without a general control-

ing power to call forth the strength of the Union, for the purpose of repelling invasions, the country might be overrun, and conquered by foreign enemies. Without such a power to suppress insurrections, our liberties might be destroyed by intestine faction, and domestic tyranny be established.

The honorable member then told us, that there was no instance of power once transferred being voluntarily renounced. Not to produce European examples, which may probably be done before the rising of this convention, have we not seen already, in seven States, (and probably in an eighth State,) legislatures surrendering some of the most important powers they possessed? But, sir, by this government, powers are not given to any particular set of men—they are in the hands of the people—delegated to their representatives chosen for short terms—to representatives at all times responsible to the people, and whose situation is perfectly similar to their own:—as long as this is the case, we have no danger to apprehend. When the gentleman called to our recollection the usual effects of the concession of powers, and imputed the loss of liberty generally to open tyranny, I wish he had gone something further. Upon a review of history, he would have found, that the loss of liberty very often resulted from factions and divisions; from local considerations, which eternally lead to quarrels: he would have found internal dissensions to have more frequently demolished civil liberty, than a tenacious disposition in rulers to retain any stipulated powers.

[Here Mr. Madison enumerated the various means whereby nations had lost their liberties.]

The power of raising and supporting armies is exclaimed against, as dangerous and unnecessary. I sincerely wish, sir, that there were no necessity for vesting this power in the general government. But suppose a foreign nation should declare war against the United States, must not the general legislature have the power of defending the United States? Ought it to be known to foreign nations, that the general government of the United States of America has no power to raise or support an army, even in the utmost danger, when attacked by external enemies? Would not their knowledge of such a circumstance stimulate them to fall upon us? If, sir, Congress be not invested with this power, any great nation, prompted by ambition or avarice, will be invited by our weakness to attack us; and such an attack, by disciplined veterans, would certainly be attended with success, when only opposed by irregular, undisciplined militia. Whoever considers the peculiar situation of this country, the multiplicity of its excellent inlets and harbors, and the uncommon facility of attacking it, however much he may regret the necessity of such a power, cannot hesitate a moment in granting it. One fact may elucidate this argument. In the course of the late war, when the weak parts of the Union were exposed, and many

States were placed in the most deplorable situation by the enemy's ravages, the assistance of foreign nations was thought so urgently necessary for our protection, that the relinquishment of territorial advantages was not deemed too great a sacrifice for the acquisition of one ally. This expedient was admitted with great reluctance, even by those States who expected most advantages from it. The crisis, however, at length arrived, when it was judged necessary for the salvation of this country, to make certain cessions to Spain; whether wisely, or otherwise, is not for me to say; but the fact was, that instructions were sent to our representative at the court of Spain, to empower him to enter into negotiations for that purpose. How it terminated is well known. This fact shows the extremities to which nations will recur in cases of imminent danger, and demonstrates the necessity of making ourselves more respectable. The necessity of making dangerous cessions, and of applying to foreign aid, ought to be provided against.

The honorable member then told us, that there are heart-burnings in the States that have assented to the new constitution, and that Virginia may, if she does not come into the measure, continue in amicable confederacy with those adopting States. I wish, as seldom as possible, to contradict the assertions of gentlemen; but I can venture to affirm, without danger of being detected in an error, that there is the most conclusive evidence of the satisfaction of those States being every day augmented, and that, in that State where it was adopted only by a majority of nineteen, there is not, at this time, one-fifth of the people dissatisfied. There are some reasons which induce us to conclude, that the grounds of proselytism extend every where; its principles begin to be better understood; and the inflammatory violence wherewith it was opposed by designing, illiberal and unthinking minds, begins to subside. I will not enumerate the causes from which, in my conception, the heart-burnings of a majority of its opposers have originated. Suffice it to say, that in all cases, they were founded on a misconception of the nature and tendency of the new government. Had it been candidly examined and fairly discussed, I believe, sir, that but a very inconsiderable minority of the people of the United States would at any time have opposed it. With respect to the Swiss confederacy, which the honorable gentleman has proposed for our example, as far as historical authority may be relied upon, we shall find their government quite unworthy of our imitation. I am sure if the honorable member had sufficiently considered their history and government, he never would have quoted their example in this place. He would have found that, instead of respecting the rights of mankind, their government (at least that of several of their cantons) is one of the vilest aristocracies that ever was instituted. The peasants of some of their cantons are more op-

pressed and degraded than the subjects of any monarch of Europe; nay, almost as much so as those of any eastern despot. It is a novelty in politics, that from the worst of systems the happiest consequences should arise. For it is their aristocratical rigor, and the peculiarity of their situation, that have so long supported their union. Without the closest compressment, dismemberment would unquestionably ensue, and their powerful, ambitious neighbors would immediately avail themselves of their least jarrings. As we are not circumstanced like them, however, no conclusive precedent can be drawn from their situation. I trust the gentleman does not carry his idea so far as to recommend a separation from the adopting States. This government may secure our happiness; this is at least as probable as that it shall be oppressive. If eight States have, from a persuasion of its policy and utility, adopted it, shall Virginia shrink from it, without a full conviction of its danger and inutility? I hope she will never shrink from any duty: I trust she will not determine without the most serious reflection and deliberation.

I confess to you, sir, that were uniformity of religion to be introduced by this system, it would, in my opinion, be ineligible; but I have no reason to conclude, that uniformity of government will produce that of religion. To the great honor of America, that right is perfectly free and unshackled among us. The government has no jurisdiction over it; the least reflection will convince us, there is no danger to be feared on that ground.

But we are flattered with the probability of obtaining previous amendments. This point calls for the most serious care of the convention. If amendments are to be proposed by one State, other States have the same right, and will also propose alterations. These cannot but be dissimilar and opposite in their nature. I beg leave to remark, that the governments of the different States are in many respects dissimilar in their structure; their legislative bodies are not similar; their executives are still more different. In several of the States, the first magistrate is elected by the people at large; in others, by joint ballot of the members of both branches of the legislature; and in others again, in other different manners. This dissimilarity has occasioned a diversity of opinion on the theory of government, which will, without many reciprocal concessions, render a concurrence impossible. Although the appointment of an executive magistrate has not been thought destructive to the principles of democracy, in any of the States, yet, in the course of the debate, we find objections made to the federal executive: it is urged that the president will degenerate into a tyrant. I intended, in compliance with the call of the honorable member, to explain the reasons of proposing this constitution, and develop its principles; but I shall postpone my remarks, till we hear the supplement which he has in-

formed us he means to add to what he has already offered.

Give me leave to say something of the nature of the government, and to show that it is perfectly safe and just, to vest it with the power of taxation. There are a number of opinions; but the principal question is, whether it be a federal or a consolidated government. In order to judge properly of the question before us, we must consider it minutely, in its principal parts. I myself conceive, that it is of a mixed nature; it is, in a manner, unprecedented. We cannot find one express prototype in the experience of the world: it stands by itself. In some respects, it is a government of a federal nature: in others, it is of a consolidated nature. Even if we attend to the manner in which the constitution is investigated, ratified and made the act of the people of America, I can say, notwithstanding what the honorable gentleman has alleged, that this government is not completely consolidated; nor is it entirely federal. Who are the parties to it? The people—not the people as composing one great body, but the people as composing thirteen sovereignties. Were it, as the gentleman asserts, a consolidated government, the assent of a majority of the people would be sufficient for its establishment, and as a majority have adopted it already, the remaining States would be bound by the act of the majority, even if they unanimously reprobated it. Were it such a government as is suggested, it would be now binding on the people of this State, without having had the privilege of deliberating upon it; but, sir, no State is bound by it, as it is, without its own consent. Should all the States adopt it, it will be then a government established by the thirteen States of America, not through the intervention of the legislatures, but by the people at large. In this particular respect, the distinction between the existing and proposed governments, is very material. The existing system has been derived from the dependent, derivative authority of the legislatures of the States; whereas this is derived from the superior power of the people. If we look at the manner in which alterations are to be made in it, the same idea is in some degree attended to. By the new system, a majority of the States cannot introduce amendments; nor are all the States required for that purpose; three fourths of them must concur in alterations; in this there is a departure from the federal idea. The members to the national House of Representatives are to be chosen by the people at large, in proportion to the numbers in the respective districts. When we come to the Senate, its members are elected by the States in their equal and political capacity; but had the government been completely consolidated, the Senate would have been chosen by the people, in their individual capacity, in the same manner as the members of the other House. Thus it is of a complicated nature, and this complication, I trust, will be found to exclude



the evils of absolute consolidation, as well as of a mere confederacy. If Virginia was separated from all the States, her power and authority would extend to all cases; in like manner, were all powers vested in the general government, it would be a consolidated government; but the powers of the federal government are enumerated; it can only operate in certain cases: it has legislative powers on defined and limited objects, beyond which it cannot extend its jurisdiction.

But the honorable member has satirized, with peculiar acrimony, the powers given to the general government by this constitution. I conceive that the first question on this subject is, whether these powers be necessary; if they be, we are reduced to the dilemma of either submitting to the inconvenience, or losing the Union. Let us consider the most important of these reprobated powers; that of direct taxation is most generally objected to. With respect to the exigencies of government, there is no question but the most easy mode of providing for them will be adopted. When, therefore, direct taxes are not necessary, they will not be resorted to. It can be of little advantage to those in power, to raise money in a manner oppressive to the people. To consult the conveniences of the people, will cost them nothing, and in many respects will be advantageous to them. Direct taxes will only be resorted to for great purposes. What has brought on other nations those immense debts, under the pressure of which many of them labor? Not the expenses of their governments, but war. If this country should be engaged in war, (and I conceive we ought to provide for the possibility of such a case,) how would it be carried on? By the usual means provided from year to year? As our imports will be necessary for the expenses of government, and other common exigencies, how are we to carry on the means of defence? How is it possible a war could be supported without money or credit? And would it be possible for government to have credit, without having the power of raising money? No, it would be impossible for any government, in such a case, to defend itself. Then, I say, sir, that it is necessary to establish funds for extraordinary exigencies, and give this power to the general government; for the utter inutility of previous requisitions on the States is too well known. Would it be possible for those countries, whose finances and revenues are carried to the highest perfection, to carry on the operations of government on great emergencies, such as the maintenance of a war, without an uncontrolled power of raising money? Has it not been necessary for Great Britain, notwithstanding the facility of the collection of her taxes, to have recourse very often to this and other extraordinary methods of procuring money? Would not her public credit have been ruined, if it was known that her power to raise money was limited? Has not France been obliged, on great occa-

sions, to recur to unusual means, in order to raise funds? It has been the case in many countries, and no government can exist, unless its powers extend to make provisions for every contingency. If we were actually attacked by a powerful nation, and our general government had not the power of raising money, but depended solely on requisitions, our condition would be truly deplorable: if the revenues of this commonwealth were to depend on twenty distinct authorities, it would be impossible for it to carry on its operations. This must be obvious to every member here: I think, therefore, that it is necessary for the preservation of the Union, that this power should be given to the general government.

But it is urged, that its consolidated nature, joined to the power of direct taxation, will give it a tendency to destroy all subordinate authority; that its increasing influence will speedily enable it to absorb the State governments. I cannot bring myself to think that this will be the case. If the general government were wholly independent of the governments of the particular States, then indeed, usurpation might be expected to the fullest extent: but, sir, on whom does this general government depend? It derives its authority from these governments, and from the same sources from which their authority is derived. The members of the federal government are taken from the same men from whom those of the State legislatures are taken. If we consider the mode in which the federal representatives will be chosen, we shall be convinced, that the general never will destroy the individual governments; and this conviction must be strengthened by an attention to the construction of the Senate. The representatives will be chosen, probably under the influence of the members of the State legislatures: but there is not the least probability that the election of the latter will be influenced by the former. One hundred and sixty members representing this commonwealth in one branch of the legislature, are drawn from the people at large, and must ever possess more influence than the few men who will be elected to the general legislature. Those who wish to become federal representatives, must depend on their credit with that class of men who will be the most popular in their counties, who generally represent the people in the State governments: they can, therefore, never succeed in any measure contrary to the wishes of those on whom they depend. So that on the whole, it is almost certain, that the deliberations of the members of the federal House of Representatives, will be directed to the interests of the people of America. As to the other branch, the senators will be appointed by the legislatures, and though elected for six years, I do not conceive they will so soon forget the source from whence they derive their political existence. This election of one branch of the federal, by the State legislatures, secures an absolute dependence of the former on the latter. The

biennial exclusion of one third, will lessen the facility of a combination, and preclude all likelihood of intrigues. I appeal to our past experience, whether they will attend to the interests of their constituent States. Have not those gentlemen who have been honored with seats in Congress, often signalized themselves by their attachment to their States? Sir, I pledge myself that this government will answer the expectations of its friends, and foil the apprehensions of its enemies. I am persuaded that the patriotism of the people will continue, and be a sufficient guard to their liberties, and that the tendency of the constitution will be, that the State governments will counteract the general interest, and ultimately prevail. The number of the representatives is yet sufficient for our safety, and will gradually increase; and if we consider their different sources of information, the number will not appear too small.

Sir, that part of the proposed constitution which gives the general government the power of laying and collecting taxes, is indispensable and essential to the existence of any efficient, or well organized system of government: if we consult reason, and be ruled by its dictates, we shall find its justification there: if we review the experience we have had, or contemplate the history of nations, there too we shall find ample reasons to prove its expediency. It would be preposterous to depend for necessary supplies on a body which is fully possessed of the power of withholding them. If a government depends on other governments for its revenues; if it must depend on the voluntary contributions of its members, its existence must be precarious. A government that relies on thirteen independent sovereignties for the means of its existence, is a solecism in theory, and a mere nullity in practice. Is it consistent with reason, that such a government can promote the happiness of any people? It is subversive of every principle of sound policy, to trust the safety of a community with a government totally destitute of the means of protecting itself or its members. Can Congress, after the repeated unequivocal proofs it has experienced of the utter inutility and inefficacy of requisitions, reasonably expect that they would be hereafter effectual or productive? Will not the same local interests, and other causes, militate against a compliance? Whoever hopes the contrary must for ever be disappointed. The effect, sir, cannot be changed without a removal of the cause. Let each county in this commonwealth be supposed free and independent: let your revenues depend on requisitions of proportionate quotas from them: let application be made to them repeatedly, and then ask yourself, is it to be presumed that they would comply, or that an adequate collection could be made from partial compliances? It is now difficult to collect the taxes from them: how much would that difficulty be enhanced, were you to depend solely on their generosity? I appeal to the reason of every gentleman here,

and to his candor, to say whether he is not persuaded that the present confederation is as feeble as the government of Virginia would be in that case: to the same reason I appeal, whether it be compatible with prudence to continue a government of such manifest and palpable weakness and inefficiency.

If we recur to history, and review the annals of mankind, I undertake to say, that no instance can be produced by the most learned man, of any confederate government, that will justify a continuation of the present system; or that will not, on the contrary, demonstrate the necessity of this change, and of substituting to the present pernicious and fatal plan, the system now under consideration, or one equally energetic. The uniform conclusion drawn from a review of ancient and modern confederacies, is, that instead of promoting the public happiness, or securing public tranquillity, they have, in every instance, been productive of anarchy and confusion—ineffectual for the preservation of harmony, and a prey to their own dissensions and foreign invasions.

The Amphictyonic league resembled our confederation in its nominal powers: it was possessed of rather more efficiency. The component States retained their sovereignty, and enjoyed an equality of suffrage in the federal council. But though its powers were more considerable in many respects than those of our present system, yet it had the same radical defect. Its powers were exercised over its individual members in their political capacities. To this capital defect it owed its disorders, and final destruction. It was compelled to recur to the sanguinary coercion of war to enforce its decrees. The struggles consequent on a refusal to obey a decree, and an attempt to enforce it, produced the necessity of applying to foreign assistance: by complying with that application, and employing his wiles and intrigues, Philip of Macedon acquired sufficient influence to become a member of the league; and that artful and insidious prince soon after became master of their liberties.

The Achaean league, though better constructed than the Amphictyonic, in material respects, was continually agitated with domestic dissensions, and driven to the necessity of calling in foreign aid; this also eventuated in the demolition of their confederacy. Had they been more closely united, their people would have been happier; and their united wisdom and strength would not only have rendered unnecessary all foreign interpositions in their affairs, but would have enabled them to repel the attack of any enemy. If we descend to more modern examples, we shall find the same evils resulting from the same sources.

The Germanic system is neither adequate to the external defence or internal felicity of the people; the doctrine of quotas and requisitions flourishes here. Without energy—without stability—the empire is a nerveless body. The most furious conflicts, and the most implacable

animosities between its members, strikingly distinguish its history. Concert and co-operation are incompatible with such an injudiciously constructed system.

The republic of the Swiss is sometimes instanced for its stability; but even there, dissensions and wars of a bloody nature, have been frequently seen between the cantons. A peculiar coincidence of circumstances contributes to the continuance of their political connection. Their feeble association owes its existence to their singular situation. There is a schism this moment in their confederacy, which, without the necessity of uniting for their external defence, would immediately produce its dissolution.

The confederate government of Holland is a further confirmation of the characteristic imbecility of such governments. From the history of this government, we might derive lessons of the most important utility.

[Here Mr. Madison quoted sundry passages from DeWitt, respecting the people of Holland, and the war which they had so long supported against the Spanish monarch; showing the impolitic and injudicious structure of their confederacy; that it was entirely destitute of energy, because their revenues depended chiefly on requisitions; that, during that long war, the provinces of Guelderland and Overysseel had not paid their respective quotas, but had evaded altogether their payments; in consequence of which, two-sevenths of the resources of the community had never been brought into action; nor contributed in the least towards the prosecution of the war: that the fear of pressing danger stimulated Holland and the other provinces to pay all the charges of the war; that those two provinces had continued their delinquencies; that, the province of Holland alone paid more than all the rest; still those provinces which paid up their proportional shares, claimed from the failing states the amounts of their arrearages; that the most fatal consequences had nearly resulted from the difficulty of adjusting those claims, and from the extreme aversion of the delinquent states to discharge even their most solemn engagements: that there are existing controversies between the provinces on this account at present; and to add to the evils consequent upon requisitions, that unanimity and the revision and sanction of their constituents, were necessary to give validity to the decisions of the states general. He then proceeded,—[Sir, these radical defects in their confederacy must have dissolved their association long ago, were it not for their peculiar position—circumscribed in a narrow territory; surrounded by the most powerful nations in the world; possessing peculiar advantages from their situation; an extensive navigation and a powerful navy—advantages which it was clearly the interest of those nations to diminish or deprive them of. Their late unhappy dissensions were manifestly produced by the vices of their system. We may derive much benefit

from the experience of that unhappy country. Governments, destitute of energy, will always produce anarchy. These facts are worthy the most serious consideration of every gentleman here. Does not the history of these confederacies coincide with the lessons drawn from our own experience? I most earnestly pray that America may have sufficient wisdom to avail herself of the instructive information she may derive from a contemplation of the sources of their misfortunes, and that she may escape a similar fate, by avoiding the causes from which their infelicity sprung. If the general government is to depend on the voluntary contributions of the States for its support, dismemberment of the United States may be the consequence. In cases of imminent danger, those States alone, more immediately exposed to it, would exert themselves; those remote from it would be too supine to interest themselves warmly in the fate of those whose distresses they did not immediately perceive. The general government ought, therefore, to be armed with power to defend the whole Union.

Must we not suppose, that those parts of America which are most exposed, will first be the scenes of war? Those nations, whose interest is incompatible with an extension of our power, and who are jealous of our resources to become powerful and wealthy, must naturally be inclined to exert every means to prevent our becoming formidable. Will they not be impelled to attack the most exposed parts of the Union? Will not their knowledge of the weakness of our government stimulate them the more readily to such an attack? Those parts to which relief can be afforded with most difficulty, are the extremities of the country, and will be the first objects of our enemies. The general government, having no resources beyond what are adequate to its existing necessities, will not be able to afford any effectual succor to those parts which may be invaded.

In such a case, America must perceive the danger and folly of withholding from the Union, a power sufficient to protect the whole territory of the United States. Such an attack is far from improbable, and if it be actually made, it is difficult to conceive a possibility of escaping the catastrophe of a dismemberment. On this subject, we may receive an estimable and instructive lesson, from an American confederacy; from an example which has happened in our country, and which applies to us with peculiar force, being most analogous to our situation. I mean that species of association or union which subsisted in New England. The colonies of Massachusetts, Bristol, Connecticut, and New Hampshire, were confederated together.

The object of that confederacy was primarily to defend themselves against the inroads and depredations of the Indians. They had a common council, consisting of deputies from each party, with an equality of suffrage in their deliberations. The general expenditures and charges were to be adequately defrayed. Its powers

were very similar to those of the confederation. Its history proves clearly, that a government, founded on such principles, must ever disappoint the hopes of those who expect its operations to be conducive to public happiness.

There are facts on record to prove, that instead of answering the end of its institution, or the expectation of its framers, it was violated with impunity; and only regarded when it coincided perfectly with the views and immediate interests of the respective parties.

The strongest member of the union availed itself of its circumstances to infringe their confederacy. Massachusetts refused to pay its quotas. In the war between England and Holland, it was found particularly necessary to make more exertions for the protection of that country.

Massachusetts being then more powerful and less exposed than the other colonies, refused its contributions to the general defence. In consequence of this, the common council remonstrated against the council of Massachusetts. This altercation terminated in the dissolution of their union. From this brief account of a system perfectly resembling our present one, we may easily divine the inevitable consequences of a longer adherence to the latter.

[Mr. Madison then recapitulated many instances of the prevalent persuasion of the wisest patriots of the States, that the safety of all America depended on union; and that the government of the United States must be possessed of an adequate degree of energy, or that otherwise their connection could not be justly denominated an union. He likewise enumerated the expedients that had been attempted by the people of America to form an intimate association, from the meeting at New York in the year 1754, downwards; that their sentiments on this subject had been uniform, both in their colonial and independent conditions; and that a variety of causes had hitherto prevented the adoption of an adequate system. He then continued thus:]

If we take experience for our guide, we shall find still more instructive direction on this subject. The weakness of the existing articles of the union, showed itself during the war. It has manifested itself since the peace, to such a degree as can leave no doubt in any rational, intelligent and unbiassed mind, of the necessity of an alteration: nay, this necessity is obvious to all America; it has forced itself on the minds of the people. The committee has been informed, that the confederation was not completed till the year 1781, when a great portion of the war was ended; consequently no part of the merit of the antecedent operations of the war could justly be attributed to that system. Its debility was perceived almost as soon as it was put in operation. A recapitulation of the proofs which have been experienced of its inefficacy, is unnecessary. It is most notorious, that feebleness universally marked its character. Shall we be safe in another war in the same situation?

That instrument required the voluntary contributions of the States, and thereby sacrificed some of our best privileges. The most intolerable and unwarrantable oppressions were committed on the people during the late war. The gross enormity of those oppressions might have produced the most serious consequences, were it not for the spirit of liberty, which preponderated against every consideration.

A scene of injustice, partiality and oppression, may bring heavenly vengeance on any people. We are now by our sufferings, expiating the crimes of the otherwise glorious revolution. Is it not known to every member of this committee, that the great principles of a free government were reversed through the whole progress of that scene? Was not every State harassed? Was not every individual oppressed and subjected to repeated distresses? Was this right? Was it a proper form of government, that warranted, authorized, or overlooked, the most wanton violations of property? Had the government been vested with complete power to procure a regular and adequate supply of revenue, those oppressive measures would have been unnecessary. But, sir, can it be supposed that a repetition of such measures would ever be acquiesced in? Can a government, that stands in need of such measures, secure the liberty, or promote the happiness or glory of any country? If we do not change this system, consequences must ensue, that gentlemen do not now apprehend. If other testimony were necessary, I might appeal to that which I am sure is very weighty, but which I mention with reluctance. At the conclusion of the war, that man who had the most extensive acquaintance with the nature of the country, who well understood its interests, and who had given the most unequivocal and most brilliant proofs of his attachment to its welfare,—when he laid down his arms, wherewith he had so nobly and successfully defended his country, publicly testified his disapprobation of the present system, and suggested that some alteration was necessary to render it adequate to the security of our happiness. I did not introduce that great name to bias any gentleman here. Much as I admire and revere the man, I consider these members as not to be actuated by the influence of any man; but I introduced him as a respectable witness to prove that the articles of the confederation were inadequate, and that we must resort to something else. His modesty did not point out what ought to be done, but said, that some great change was necessary. But, sir, testimony, if wished for, may be found in abundance, and numerous conclusive reasons may be urged for this change. Experience daily produced such irresistible proofs of the defects of that system, that this commonwealth was induced to exert her influence to meliorate it; she began that noble work, in which I hope she will persist; she proposed to revise it; her proposition met with the concurrence, which that of a respectable party will always meet.

I am sure if demonstration were necessary on the part of this commonwealth, reasons have been abundantly heard in the course of this debate, manifold and cogent enough, not only to operate conviction, but to disgust an attentive hearer. Recollect the resolution of the year 1784. It was then found that the whole burden of the Union was sustained by a few States. This State was likely to be saddled with a very disproportionate share. That expedient was proposed to obviate this inconvenience, which has been placed in its true light. It has been painted in sufficient horrors by the honorable gentleman who spoke last.

I agree with the honorable gentleman, (Mr. Henry,) that national splendor and glory are not our objects: but does he distinguish between what will render us secure and happy at home, and what will render us respectable abroad? If we be free and happy at home, we cannot fail to be respectable abroad.

The confederation is so notoriously feeble, that foreign nations are unwilling to form any treaties with us; they are apprised that our general government cannot perform any of its engagements: but, that they may be violated, at pleasure, by any of the States. Our violation of treaties already entered into, proves this truth unequivocally. No nation will therefore make any stipulations with Congress, conceding any advantages of importance to us; they will be the more averse to entering into engagements with us, as the imbecility of our government enables them to derive many advantages from our trade, without granting us any return. Were this country united by proper bands, in addition to other great advantages, we could form very beneficial treaties with foreign states. But this can never happen without a change in our system. Were we not laughed at by the minister of that nation, from which we may be able yet to extort some of the most salutary measures for this country? Were we not told that it was necessary to temporize till our government acquired consistency? Will any nation relinquish national advantages to us? You will be greatly disappointed, if you expect any such good effects from this contemptible system. Let us recollect our conduct to that country from which we have received the most friendly aid. How have we dealt with that benevolent ally—France? Have we complied with our most sacred obligations to that nation? Have we paid the interest punctually from year to year? Is not the interest accumulating, while not a shilling is discharged of the principal? The magnanimity and forbearance of that friendly monarch are so great, that he has not called upon us for his claims, even in his own distress and necessity. This, sir, is an additional motive to increase our exertions. At this moment of time, a very considerable amount is due from us to that country and to others. [Here Mr. Madison mentioned the amount of the debts due to different foreign nations.] We have been obliged to

borrow money, even to pay the interest of our debts. This is a ruinous and most disgraceful expedient. Is this a situation on which America can rely for security and happiness? How are we to extricate ourselves? The honorable member tells us, we might rely on the punctuality and friendship of the States, and that they will discharge their quotas for the future; but, sir, the contributions of the States have been found inadequate from the beginning, and are every day diminishing instead of increasing. From the month of June, 1787, till June, 1788, they have only paid two hundred and seventy-six thousand six hundred and forty-one dollars into the federal treasury for the purposes of supporting the national government, and discharging the interest of the national debts: a sum so very insufficient, that it must greatly alarm the friends of their country. Suggestions and strong assertions dissipate before these facts.

Sir, the subject of direct taxation is perhaps one of the most important that can engage our attention, or that can be involved in the discussion of this great and momentous question. If it be to be judged by the comments made upon it, by the opposers and favorers of the proposed system, it requires a most clear and critical investigation. The objections against the exercise of this power by the general government, as far as I am able to comprehend them, are founded upon the supposition of its being unnecessary, impracticable, unsafe and accumulative of expense. I shall therefore consider, first, how far it may be necessary; secondly, how far it may be practicable; thirdly, how far it may be safe, as well with respect to the public liberty at large, as to the State legislatures; and fourthly, with respect to economy.

First then, is it necessary? I must acknowledge that I concur in opinion with those gentlemen who told you, that this branch of revenue was essential to the salvation of the Union. It appears to me necessary, in order to secure that punctuality which is requisite in revenue matters. Without punctuality individuals will refuse it that confidence, without which it cannot get resources. I beg gentlemen to consider the situation of this country, if unhappily the government were to be deprived of this power. Let us suppose for a moment that one of those great nations that may be unfriendly to us, should take advantage of our weakness, which they will be more ready to do when they know the want of this resource in our government, and should attack us, what forces could we oppose to it? Could we find safety in such forces as we could call out? Could we call forth a sufficient number, either by drafts, or in any other way, to repel a powerful enemy? The inability of the government to raise and support regular troops, would compel us to depend on militia. It would then be necessary to give this power to the government, or run the risk of national annihilation. It is my firm be-

lief, that if a hostile attack were made this moment on the United States, it would at once flash conviction on the minds of the citizens, and show them, to their deep regret, the necessity of vesting the government with this power, which alone can enable it to protect the community. I do not wish to frighten the members of this convention into a concession of this power, but to bring to their minds those considerations which demonstrate its necessity. If we were secured from the possibility, or the probability of danger, it might be unnecessary. I shall not review that concourse of dangers which may probably arise at remote periods of futurity, nor all those which we have immediately to apprehend; for this would lead me beyond the bounds which I have prescribed to myself. But I will mention one single consideration, drawn from the fact itself. I hope to have your attention.

By the treaty between the United States and his most Christian majesty, among other things it is stipulated, that the great principle on which the armed neutrality in Europe was founded, should prevail in case of future wars. The principle is this, that free ships shall make free goods, and that vessels and goods shall be both free from condemnation. Great Britain did not recognize it. While all Europe was against her, she held out without acceding to it. It has been considered for some time past, that the flames of war, already kindled, would spread, and that France and England were likely to draw those swords which were so recently put up. This is judged probable. We should not be surprised, in a short time, if we found ourselves as a neutral nation—France being on one side, and Great Britain on the other. Then, what would be the situation of America? She is remote from Europe, and ought not to engage in her politics or wars. The American vessels, if they can do it with advantage, may carry on the commerce of the contending nations. It is a source of wealth which we ought not to deny to our citizens. But, sir, is there not infinite danger, that in despite of all our caution, we shall be drawn into the war? If American vessels have French property on board, Great Britain will seize them. By this means, we shall be obliged to relinquish the advantage of a neutral nation, or be engaged in a war. A neutral nation ought to be respectable, or else it will be insulted and attacked. America, in her present impotent situation, would run the risk of being drawn in, as a party in the war, and lose the advantage of being neutral. Should it happen, that the British fleet should be superior, have we not reason to conclude, from the spirit displayed by that nation to us and to all the world, that we should be insulted in our own ports, and our vessels seized? But if we be in a respectable situation; if it be known that our government can command the whole resources of the Union, we shall be suffered to enjoy the great advantages of carrying on the commerce

of the nations at war; for none of them would be willing to add us to the number of their enemies. I shall say no more on this point, there being others which merit your consideration.

The expedient, proposed by the gentlemen opposed to this clause, is, that requisitions shall be made, and if not complied with, in a certain time, that then taxation shall be resorted to. I am clearly convinced, that whenever requisitions shall be made, they will disappoint those who put their trust in them. One reason to prevent the concurrent exertions of all the States, will arise from the suspicion, in some States, of delinquency in others. States will be governed by the motives that actuate individuals.

When a tax law is in operation, in a particular State, every citizen, if he knows of the energy of the laws to enforce payment, and that every other citizen is performing his duty, will cheerfully discharge his duty; but were it known, that the citizens of one district were not performing their duty, and that it was left to the policy of the government to make them come up with it, the citizens of the other districts would be very supine and careless in making provisions for payment. Our own experience makes the illustration more natural. If requisitions be made on thirteen different States, when one deliberates on the subject, she will know that all the rest will deliberate upon it also. This, sir, has been a principal cause of the inefficacy of the requisitions heretofore, and will hereafter produce the same evil. If the legislatures are to deliberate on this subject, (and the honorable gentleman opposed to this clause, thinks their deliberation necessary,) is it not presumable, that they will consider peculiar local circumstances? In the general council, on the contrary, the sense of all America will be drawn to a single point. The collective interest of the Union at large, will be known and pursued. No local views will be permitted to operate against the general welfare. But when propositions should come before a particular State, there is every reason to believe, that qualifications of the requisitions would be proposed; compliance might be promised, and some instant remittances might be made. This will cause delays, which, in the first instance, will produce disappointment, and produce failures every where else. This, I hope, will be considered with the attention it deserves. The public creditors will be disappointed, and of course, become more pressing. Requisitions will be made for purposes equally pervading all America; but the exertions to make compliances, will probably not be uniform in the States. If requisitions be made for future occasions for putting the States in a condition of military defence, or to repel an invasion, will the exertions be uniform and equal in all the States? Some parts of the United States are more exposed than others. Will the least exposed States exert themselves equally?

We know that the most exposed will be more immediately interested, and will incur less sacrifices in making exertions. I beg gentlemen to consider, that this argument will apply with most effect to the States which are most defenceless and exposed. The Southern States are most exposed, whether we consider their situation, or the smallness of their population. And there are other circumstances which render them still more vulnerable, which do not apply to the Northern States. They are therefore more interested in giving the government a power to command the whole strength of the Union in cases of emergency. Do not gentlemen conceive that this mode of obtaining supplies from the States, will keep alive animosities between the general government and particular States? Where the chances of failures are so numerous as thirteen, by the thirteen States, disappointment, in the first place, and consequent animosity, must inevitably take place.

Let us consider the alternatives, proposed by gentlemen, instead of the power of laying direct taxes. After the States shall have refused to comply, weigh the consequences of the exercise of this power by Congress. When it comes in the form of a punishment, great clamors will be raised among the people against the government; hatred will be excited against it. It will be regarded as an ignominious stigma on the State. It will be considered at least in this light by the State where the failure is made, and these sentiments will, no doubt, be diffused through the other States. Now let us consider the effect, if collectors are sent where the State governments refuse to comply with requisitions. It is too much in the disposition of mankind not to stop at one violation of duty. I conceive that every requisition that will be made on any part of America, will kindle a contention between the delinquent member, and the general government. Is there no reason to suppose divisions in the government (for seldom does any thing pass with unanimity,) on the subject of requisitions? The parts least exposed will oppose those measures which may be adopted for the defence of the weakest parts. Is there no reason to presume, that the representatives from the delinquent States will be more likely to foster disobedience to the requisitions of the government, than to endeavor to recommend a compliance with them to the public?

There is, in my opinion, another point of view in which this alternative will produce great evil. I will suppose a case that is very probable, namely, that partial compliances will be made. A difficulty here arises, which fully demonstrates its impolicy. If a part be paid, and the rest be withheld, how is the general government to proceed? They are to impose a tax, but how shall it be done in this case? Are they to impose it by way of punishment, on those who have paid, as well as those who have not? All these considerations taken into view, (for they are not visionary or fanciful

speculations,) will certainly produce this consequence. The general government, to avoid those disappointments first described, and to avoid the contentions and embarrassments which I have last described, will, in all probability, throw the public burdens on those branches of revenue that will be more in their power. They will be continually necessitated to augment the imposts. If we throw a disproportion of the burdens on that side, shall we not discourage commerce, and suffer many political evils? Shall we not increase that disproportion on the Southern States, which for some time will operate against us? The Southern States, from having fewer manufactures, will import and consume more. They will therefore pay more of the imposts. The more commerce is burdened, the more the disproportion will operate against them. If direct taxation be mixed with other taxes, it will be in the power of the general government to lessen that inequality. But this inequality will be increased to the utmost extent, if the general government have not this power. There is another point of view in which this subject affords us instruction. The imports will decrease in time of war. An honorable gentleman has said, that the imposts would be so productive that there would be no occasion for laying taxes. I will submit two observations to him and to the committee. First, in time of war the imposts will be less; and, as I hope we are considering a government for a perpetual duration, we ought to provide for every future contingency. At present, our importations bear a full proportion to the full amount of our sales, and to the number of our inhabitants; but when we have inhabitants enough, our imports will decrease; and as the national demands will increase with our population, our resources will increase as our wants increase. The other consideration, which I will submit on this part of the subject, is this. I believe it will be found in practice, that those who fix the public burdens, will feel a greater degree of responsibility when they are to impose them on the citizens immediately, than if they were to say what sum should be paid by the States. If they exceed the limits of propriety, universal discontent and clamor will arise. Let us suppose they were to collect the taxes from the citizens of America; would they not consider their circumstances? Would they not attentively weigh what could be done by the citizens at large? Were they to exceed in their demands, what were reasonable burdens, the people would impute it to the right source, and look on the imposers as odious.

When I consider the nature of the various objections brought against this clause, I should be led to think, that the difficulties were such that gentlemen would not be able to get over them, and that the power, as defined in the plan of the convention, was impracticable. I shall trouble them with a few observations on that point.

It has been said, that ten men deputed from



this State, and others in proportion from other States, will not be able to adjust direct taxes so as to accommodate the various citizens in thirteen States.

I confess I do not see the force of this observation. Could not ten intelligent men, chosen from ten districts from this State, lay direct taxes on a few objects in the most judicious manner? It is easily to be conceived, that they would be acquainted with the situation of the different citizens of this country. Can any one divide this State into any ten districts so as not to contain men of sufficient information? Could not one man of knowledge be found in a district? When thus selected, will they not be able to carry their knowledge into the general council? I may say with great propriety, that the experience of our own legislature demonstrates the competency of Congress to lay taxes wisely. Our Assembly consists of considerably more than a hundred, yet from the nature of the business, it devolves on a much smaller number. It is through their sanction, approved of by all the others. It will be found that there are seldom more than ten men who rise to high information on this subject. Our federal representatives, as has been said by an honorable member, who has entered into the subject with a great deal of ability, will get information from the State governments. They will be perfectly well informed of the circumstances of the people of the different States, and the mode of taxation that would be most convenient for them, from the laws of the States. In laying taxes, they may even refer to the State systems of taxation. Let it not be forgotten, that there is a probability, that that ignorance, which is complained of in some parts of America, will be continually diminishing. Let us compare the degree of knowledge which the people had in time past, to their present information. Does not our own experience teach us, that the people are better informed than they were a few years ago? The citizen of Georgia knows more now of the affairs of New Hampshire, than he did, before the revolution, of those of South Carolina. When the representatives from the different States are collected together, to consider this subject, they will interchange their knowledge with one another, and will have the laws of each State on the table. Besides this, the intercourse of the States will be continually increasing. It is now much greater than before the revolution. An honorable friend of mine seems to conceive, as an insuperable objection, that if land were made the particular object of taxation, it would be unjust, as it would exonerate the commercial part of the community; that if it were laid on trade, it would be unjust in discharging the landholders; and that any exclusive selection would be unequal and unfair. If the general government were tied down to one object, I confess the objection would have some force in it. But if this be not the case, it can have no weight. If it should

have a general power of taxation, they could select the most proper objects, and distribute the taxes in such a manner, as that they should fall in a due degree on every member of the community. They will be limited to fix the proportion of each State, and they must raise it in the most convenient and satisfactory manner to the public.

The honorable member considered it as another insuperable objection, that uniform laws could not be made for thirteen States, and that dissonance would produce inconvenience and oppression. Perhaps it may not be found, on due inquiry, to be so impracticable as he supposes. But were it so, where is the evil of different laws operating in different States, to raise money for the general government? Where is the evil of such laws? There are instances in other countries, of different laws operating in different parts of the country, without producing any kind of oppression. The revenue laws are different in England and Scotland in several respects. Their laws relating to custom, exercises and trade, are similar; but those respecting direct taxation are dissimilar. There is a land tax in England, and a land tax in Scotland, but the laws concerning them are not the same. It is much heavier in proportion in the former than in the latter. The mode of collection is different; yet this is not productive of any national inconvenience. Were we to argue from the objections against the proposed plan, we must conclude that this dissimilarity would, in that point alone, have involved those kingdoms in difficulties. In England itself, there is a variety of different laws operating differently in different places.

I will make another observation on the objection of my honorable friend. He seemed to conclude, that concurrent collections under different authorities, were not reducible to practice. I agree that were they independent of the people, the argument would be good. But they must serve one common master. They must act in concert, or the defaulting party must bring on itself the resentment of the people. If the general government be so constructed that it will not dare to impose such burdens as will distress the people, where is the evil of its having a power of taxation concurrent with the States? The people would not support it, were it to impose oppressive burdens. Let me make one more comparison of the State governments to this plan. Do not the States impose taxes for local purposes? Does the concurrent collection of taxes, imposed by the legislatures for general purposes, and of levies laid by the counties for parochial and county purposes, produce any inconvenience or oppression? The collection of these taxes is perfectly practicable, and consistent with the views of both parties. The people at large are the common superior of the State governments, and the general government. It is reasonable to conclude, that they will avoid interferences for two causes—to avoid public



oppression, and to render the collections more productive. I conceive they will be more likely to produce disputes, in rendering it inconvenient for the people, than to run into interfering regulations.

In the third place, I shall consider, whether the power of taxation to be given to the general government be safe: and first, whether it be safe as to the public liberty in general. It would be sufficient to remark, that it is, because, I conceive, the point has been clearly established by more than one gentleman who have already spoken on the same side with me. In the decision of this question, it is of importance to examine, whether elections of representatives by great districts of freeholders, be favorable to the fidelity of representatives. The greatest degree of treachery in representatives, is to be apprehended where they are chosen by the least number of electors; because there is a greater facility of using undue influence, and because the electors must be less independent. This position is verified in the most unanswerable manner, in that country to which appeals are so often made, and sometimes instructively. Who are the most corrupt members of Parliament? Are they not the inhabitants of small towns and districts? The supporters of liberty are from the great counties. Have we not seen that the representatives of the city of London, who are chosen by such thousands of voters, have continually studied and supported the liberties of the people, and opposed the corruption of the crown? We have seen continually, that most of the members in the ministerial majority are drawn from small circumscribed districts. We may therefore conclude, that our representatives being chosen by such extensive districts, will be upright and independent. In proportion as we have security against corruption in representatives, we have security against corruption from every other quarter whatsoever.

I shall take a view of certain subjects which will lead to some reflections, to quiet the minds of those gentlemen who think that the individual governments will be swallowed up by the general government. In order to effect this, it is proper to compare the State governments to the general government with respect to reciprocal dependence, and with respect to the means they have of supporting themselves, or of encroaching upon one another. At the first comparison, we must be struck with these remarkable facts. The general government has not the appointment of a single branch of the individual governments, or of any officers within the States, to execute their laws. Are not the States integral parts of the general government? Is not the President chosen under the influence of the State legislatures? May we not suppose that he will be complaisant to those from whom he has his appointment, and from whom he must have his re-appointment? The senators are appointed altogether by the legislatures.

The honorable gentleman apprehends a coalition between the President, Senate and House of Representatives, against the States. This could be supposed only from a similarity of the component parts.

A coalition is not likely to take place, because its component parts are heterogeneous in their nature. The House of Representatives is not chosen by the State governments, but under the influence of those who compose the State legislature. Let us suppose ten men appointed to carry the government into effect; there is every degree of certainty that they would be indebted for their re-election to the members of the legislatures. If they derive their appointment from them, will they not execute their duty to them? Besides this, will not the people, (whose predominant interest will ultimately prevail,) feel great attachment to the State legislatures? They have the care of all local interests—those familiar, domestic objects, for which men have the strongest predilection. The general government, on the contrary, has the preservation of the aggregate interests of the Union; objects, which being less familiar, and more remote from men's notice, have a less powerful influence on their minds. Do we not see great and natural attachments arising from local considerations? This will be the case, in a much stronger degree, in the State governments, than in the general government. The people will be attached to their State legislatures from a thousand causes; and into whatever scale the people at large will throw themselves, that scale will preponderate. Did we not perceive, in the early stages of this war, when Congress was the idol of America, and when in pursuit of the object most dear to America, that they were attached to their States? Afterwards, the whole current of their affection was to the States, and it would be still the case, were it not for the alarming situation of America.

At one period of the congressional history, they had power to trample on the States. When they had that fund of paper money in their hands, and could carry on all their measures without any dependence on the States, was there any disposition to debase the State governments? All that municipal authority which was necessary to carry on the administration of the government, they still retained unimpaired. There was no attempt to diminish it.

I am led, by what has fallen from gentlemen, to take this supposed combination in another view. Is it supposed, that the influence of the general government will facilitate a combination between the members? Is it supposed, that it will preponderate against that of the State governments? The means of influence consist in having the disposal of gifts and emoluments, and in the number of persons employed by, and dependent upon a government. Will any gentleman compare the number of persons who will be employed in the general government

with the number of those that will be in the State governments? The number of dependents upon the State governments will be infinitely greater than those on the general government. I may say with truth, that there never was a more economical government in any age or country; nor which will require fewer agents, or give less influence.

Let us compare the members composing the legislative, executive and judicial powers in the general government, with those in the States, and let us take into view the vast number of persons employed in the States; from the chief officers to the lowest, we shall find the scale preponderating so much in favor of the States, that while so many persons are attached to them, it will be impossible to turn the balance against them. There will be an irresistible bias towards the State governments. Consider the number of militia officers, the number of justices of the peace, the number of the members of the legislatures, and all the various officers for districts, towns and corporations, all intermixing with, and residing among the people at large. While this part of the community retains its affection to the State governments, I conceive the fact to be, that the State governments, and not the general government, will preponderate. It cannot be contradicted, that they have more extensive means of influence. I have my fears, as well as the honorable gentleman; but my fears are on the other side. Experience, I think, will prove, (though there be no infallible proof of it here,) that the powerful and prevailing influence of the States, will produce such attention to local considerations, as will be inconsistent with the advancement of the interests of the Union. But I choose rather to indulge my hopes than fears, because I flatter myself, if inconveniences should result from it, that the clause which provides amendments will remedy them. The combination of powers vested in those persons, would seem conclusive in favor of the States.

The powers of the general government relate to external objects, and are but few. But the powers in the States relate to those great objects which immediately concern the prosperity of the people. Let us observe also, that the powers in the general government are those which will be exercised mostly in time of war, while those of the State governments will be exercised in time of peace. But I hope the time of war will be little, compared to that of peace. I could not complete the view which ought to be taken of this subject, without making this additional remark, that the powers vested in the proposed government, are not so much an augmentation of authority in the general government, as a change rendered necessary, for the purpose of giving efficacy to those which were vested in it before. It cannot escape any gentleman, that this power in theory, exists in the confederation as fully as in this constitution. The only difference is this,

that now they tax States, and by this plan, they will tax individuals. There is no theoretic difference between the two. But in practice there will be an infinite difference between them. The one is an ineffectual power: the other is adequate to the purpose for which it is given. This change was necessary for the public safety.

Let us suppose, for a moment, that the acts of Congress, requiring money from the States, had been as effectual as the paper on the table: suppose all the laws of Congress had had complete compliance, will any gentleman say, that as far as we can judge from past experience, the State governments would have been debased, and all consolidated and incorporated in one system? My imagination cannot reach it. I conceive, that had those acts the effect which all laws ought to have, the States would have retained their sovereignty.

It seems to be supposed, that it will introduce new expenses and burdens on the people. I believe it is not necessary here to make a comparison between the expenses of the present and of the proposed government. All agree that the general government ought to have power for the regulation of commerce. I will venture to say, that very great improvements, and very economical regulations will be made. It will be a principal object to guard against smuggling, and such other attacks on the revenue as other nations are subject to. We are now obliged to defend against those lawless attempts; but from the interfering regulations of different States, with very little success. There are regulations in different States which are unfavorable to the inhabitants of other States, and which militate against the revenue. New York levies money from New Jersey by her imposts. In New Jersey, instead of co-operating with New York, the legislature favors encroachments on her regulations. This will not be the case when uniform arrangements shall be made.

Requisitions, though ineffectual, are unfriendly to economy. When requisitions are submitted to the States, there are near two thousand five hundred persons deliberating on the mode of payment. All these, during their deliberation, receive public pay. A great proportion of every session, in every State, is employed to consider whether they will pay at all, and in what mode. Let us suppose fifteen hundred persons deliberating on this subject. Let any one make a calculation; and it will be found that a very few days of their deliberation will consume more of the public money, than one year of that of the general legislature. This is not all, Mr. Chairman. When general powers shall be vested in the general government, there will be less of that mutability which is seen in the legislation of the States. The consequence will be a great saving of expense and time. There is another great advantage which I will but barely mention. The greatest calamity to which the United States can be sub-

ject, is a vicissitude of laws, and a continual shifting and changing from one object to another, that must expose the people to various inconveniences. This has a certain effect, of which sagacious men always have, and always will make an advantage. From whom is advantage made? From the industrious farmers and tradesmen, who are ignorant of the means of making such advantages. The people will not be exposed to these inconveniences under a uniform and steady course of legislation. But they have been so heretofore.

Sir, it has been said, that by giving up the power of taxation, we should give up every thing; that requisitions ought to be made on the States, and that then, if they be not complied with, Congress should lay direct taxes by way of penalty. Let us consider the dilemma which arises from this doctrine. Either requisitions will be efficacious or they will not. If they be efficacious, then I say, sir, we give up every thing as much as by direct taxation. The same amount will be paid by the people as by direct taxes. If they be not efficacious, where is the advantage of this plan? In what respect will it relieve us from the inconveniences which we have experienced from requisitions? The power of laying direct taxes by the general government, is supposed by the honorable gentleman, to be chimerical and impracticable. What is the consequence of the alternative he proposes? We are to rely upon this power to be ultimately used, as a penalty to compel the States to comply. If it be chimerical and impracticable in the first instance, it will be equally so when it will be exercised as a penalty. A reference has been made to concurrent executions, as an instance of the possibility of interference between the two governments. But it may be answered that, under the State governments, concurrent executions cannot produce the inconvenience here dreaded, because they are executed by the same officer. Is it not in the power of the general government to employ the State officers? Is nothing to be left to future legislation, or must every thing be immutably fixed in the constitution? Where exclusive power is given to the Union, there can be no interference. Where the general and State legislatures have concurrent power, such regulations will be made, as may be found necessary to exclude interferences and other inconveniences. It will be their interest to make such regulations.

It has been said, that there is no similarity between petty corporations and independent States. I admit that, in many points of view, there is a great dissimilarity, but in others, there is a striking similarity between them, which illustrates what is before us. Have we not seen in our own country (as has been already suggested in the course of the debates) concurrent collections of taxes going on at once, without producing any inconvenience? We have seen three distinct collections of taxes for three distinct purposes. Has it not been found practi-

cable and easy for collections of taxes, for parochial, county, and State purposes, to go on at the same time? Every gentleman must know that this is now the case, and though there be a subordination in these cases which will not be in the general government, yet in practice it has been found that these different collections have been concurrently carried on, with convenience to the people, without clashing with one another, and without deriving their harmony from the circumstance of being subordinate to one legislative body. The taxes will be laid for different purposes. The members of the one government, as well as of the other, are the agents of, and subordinate to, the people. I conceive that the collections of the taxes of the one will not impede those of the other, and that there can be no interference. This concurrent collection appears to me neither chimerical nor impracticable.

Gentlemen compare resistance of the people to collectors, to refusal of requisitions. This goes against all government. It is as much as to urge that there should be no legislature. The gentlemen who favored us with their observations on this subject, seemed to have reasoned on a supposition that the general government was confined, by the paper on your table, to lay general uniform taxes. Is it necessary that there should be a tax on any given article throughout the United States? It is represented to be oppressive, that the States who have slaves and make tobacco, should pay taxes on these for federal wants, when other States, who have them not, would escape. But does the constitution on the table admit of this? On the contrary, there is a proportion to be laid on each State, according to its population. The most proper articles will be selected in each State. If one article in any State should be deficient, it will be laid on another article. Our State is secured on this foundation. Its proportion will be commensurate to its population. This is a constitutional scale, which is an insuperable bar against disproportion, and ought to satisfy all reasonable minds. If the taxes be not uniform, and the representatives of some States contribute to lay a tax of which they bear no proportion, is not this principle reciprocal? Does not the same principle hold in our State government in some degree? It has been found inconvenient to fix on uniform objects of taxation in this State, as the back parts are not circumstanced like the lower parts of the country. In both cases, the reciprocity of the principle will prevent a disposition in one part to oppress the other. An honorable gentleman seems to suppose that Congress, by the possession of this ultimate power as a penalty, will have as much credit, and will be as able to procure any sums, on any emergency, as if they were possessed of it in the first instance; and that the votes of Congress will be as competent to procure loans, as the votes of the British Commons. Would the votes of the British House of Commons have

that credit which they now have, if they were liable to be retarded in their operation, and perhaps rendered ultimately nugatory as those of Congress must be by the proposed alternative? When their vote passes, it usually receives the concurrence of the other branch, and it is known that there is sufficient energy in the government, to carry it into effect. But here, the votes of Congress are, in the first place, dependent on the compliance of thirteen different bodies, and after non-compliance, are liable to be opposed and defeated, by the jealousy of the States against the exercise of this power, and by the opposition of the people, which may be expected, if this power be exercised by Congress after partial compliances. These circumstances being known, Congress could not command one shilling. He seems to think that we ought to spare the present generation, and throw our burdens upon posterity. I will not contest the equity of this reasoning, but I must say that good policy, as well as views of economy, strongly urge us even to distress ourselves to comply with our most solemn engagements. We must make effectual provision for the payment of the interest of our public debts. In order to do justice to our creditors, and support our credit and reputation, we must lodge power somewhere or other for this purpose. As yet the United States have not been able, by any energy contained in the old system, to accomplish this end. Our creditors have a right to demand the principal, but would be satisfied with a punctual payment of the interest. If we have been unable to pay the interest, much less shall we be able to discharge the principal. It appears to me, that the whole reasoning used on this occasion shows, that we ought to adopt this system, in order to enable us to throw our burdens on posterity. The honorable member spoke of the *decemviri* at Rome, as having some similitude to the ten representatives who are to be appointed by this State. I can see no point of similitude here, to enable us to draw any conclusion. For what purpose were the *decemviri* appointed? They were invested with a plenary commission to make a code of laws. By whom were they appointed—by the people at large? No; my memory is not infallible, but it tells me they were appointed by the senate and composed of the most influential characters among the nobles. Can any thing be inferred from that against our federal representatives? Who made a discrimination between the nobles and the people?—the senate. Those men totally perverted the powers which were given them for the purpose above specified, to the subversion of the public liberty. Can we suppose that a similar usurpation might be made, by men appointed in a totally different manner? As their circumstances were totally dissimilar, I conceive that no arguments drawn from that source can apply to this government. I do not thoroughly comprehend the reasoning of the honorable gentleman, when he tells us, that the

federal government will predominate, and that the State interests will be lost; when, at the same time, he tells us, that it will be a faction of seven States. If seven States will prevail as States, I conceive that State influence will prevail. If State influence under the present feeble government has prevailed, I think that a remedy ought to be introduced by giving the general government power to suppress it.

He supposes that any argument with respect to a future war between Great Britain and France is fallacious. The other nations of Europe have acceded to that neutrality, while Great Britain opposed it. We need not expect, in case of such a war, that we should be suffered to participate of the profitable emoluments of the carrying trade, unless we were in a respectable situation. Recollect the last war. Was there ever a war in which the British nation stood opposed to so many nations? All the belligerent powers in Europe, with nearly one half of the British empire, were united against it. Yet that nation, though defeated, and humbled beyond any previous example, stood out against this. From her firmness and spirit in such desperate circumstances, we may divine what her future conduct may be. I did not contend, that it was necessary for the United States to establish a navy for that sole purpose, but instanced it as one reason out of several, for rendering ourselves respectable. I am no friend to naval or land armaments in time of peace, but if they be necessary, the calamity must be submitted to. Weakness will invite insults. A respectable government will not only entitle us to a participation of the advantages which are enjoyed by other nations, but will be a security against attacks and insults. It is to avoid the calamity of being obliged to have large armaments, that we should establish this government. The best way to avoid danger, is to be in a capacity to withstand it.

The imposts, we are told, will not diminish, because the emigrations to the westward will prevent the increase of population. Gentlemen have reasoned on this subject justly, to a certain degree. I admit, that the imposts will increase till population becomes so great as to compel us to recur to manufactures. The period cannot be very far distant, when the unsettled parts of America will be inhabited. At the expiration of twenty-five years hence, I conceive, that in every part of the United States, there will be as great a population as there is now in the settled parts. We see already, that in the most populous parts of the Union, and where there is but a medium, manufactures are beginning to be established. Where this is the case, the amount of importations will begin to diminish. Although the imposts may even increase during the term of twenty-five years, yet when we are preparing a government for perpetuity, we ought to found it on permanent principles, and not on those of a temporary nature.

Holland is a favorite quotation with honor

able members on the other side of the question. Had not their sentiments been discovered by other circumstances, I should have concluded from their reasonings on this occasion, that they were friends to the constitution. I should suppose, that they had forgotten which side of the question they were defending. Holland has been called a republic, and a government friendly to liberty. Though it may be greatly superior to some other governments in Europe, still it is not a republic, nor a democracy. Their legislature consists, in some degree, of men who legislate for life. Their councils consist of men who hold their offices for life, and who fill up offices and appoint their salaries themselves. The people have no agency, mediate or immediate, in the government. If we look at their history we shall find, that every mischief which has befallen them, has resulted from the existing confederacy. If the stadtholder has been productive of mischief—if we ought to guard against such a magistrate more than any evil, let me beseech the honorable gentleman to take notice of what produced that, and of those troubles which interrupted their tranquillity from time to time. The weakness of their confederacy produced both. When the French arms were ready to overpower their republic, and the Hollanders were feeble in the means of defence, which was principally owing to the violence of parties, they then appointed a stadtholder, who sustained them. If we look at more recent events, we shall have a more pointed demonstration, that their political infelicity arose from the imbecility of their government. In the late disorders, the states were almost equally divided, three provinces on one side, three on the other, and the other divided: one party inclined to the Prussians, and the other to the French. The situation of France did not admit of their interposing immediately in their disputes by an army; that of the Prussians did. A powerful and large army marched into Holland and compelled the other party to surrender. We know the distressing consequences to the people. What produced those disputes and the necessity of foreign interference but the debility of their confederacy? We may be warned by their example, and shun their fate, by removing the causes which produced their misfortunes.

My honorable friend has referred to the transactions of the federal council with respect to the navigation of the Mississippi. I wish it was consistent with delicacy and prudence to lay a complete view of the whole matter before this committee. The history of it is singular and curious, and perhaps its origin ought to be taken into consideration. I will touch on some circumstances, and introduce nearly the substance of most of the facts relative to it, that I may not seem to shrink from explanation. It was soon perceived, sir, after the commencement of the war with Britain, that among the various objects that would affect the happiness of the people of America, the navigation of the

Mississippi was one. Throughout the whole history of foreign negotiation, great stress was laid on its preservation. In the time of our greatest distresses, and particularly when the southern States were the scene of war, the southern States cast their eyes around to be relieved from their misfortunes. It was supposed that assistance might be obtained for the relinquishment of that navigation. It was thought that, for so substantial a consideration, Spain might be induced to afford decisive succor. It was opposed by the northern and eastern States. They were sensible that it might be dangerous to surrender this important right, particularly to the inhabitants of the western country. But so it was, that the southern States were for it, and the eastern States opposed it. Since obtaining that happy peace, which secures to us all our claims, this subject has been taken again into consideration, and deliberated upon in the federal government. A temporary relinquishment has been agitated. Several members from the different States, but particularly from the northern, were for a temporary surrender, because it would terminate disputes, and at the end of the short period for which it was to be given, the right would revert, of course, to those who had given it up. And for this temporary surrender some commercial advantages were offered. For my part, I considered that this measure, though founded on considerations plausible and honorable, was yet not justifiable but on grounds of inevitable necessity. I must declare, in justice to many characters who were in Congress, that they declared they never would agree to the measure, unless the situation of the United States was such as could not prevent it.

On the whole, I am persuaded that the adoption of this government will be favorable to the preservation of the right to that navigation. Emigrations will be made from those parts of the United States which are settled, to those which are unsettled. If we afford protection to the western country, we shall see it rapidly peopled. Emigrations from some of the northern States have lately increased. We may conclude, that those who emigrate to that country, will leave behind them all their friends and connections as advocates for this right.

What was the cause of those States being the champions of this right, when the southern States were disposed to surrender it? The preservation of this right will be for the general interest of the Union. The western country will be settled from the north as well as from the south, and its prosperity will add to the strength and security of the nation. I am not able to recollect all those circumstances which would be necessary to give gentlemen a full view of the subject. I can only add, that I consider the establishment of the new government to be the best possible means of securing our rights as well in the western parts as elsewhere.

I will not sit down till I make one more ob-

servation on what fell from an honorable member. He said that the true difference between the States lies in this circumstance—that some are carrying States, and others productive, and that the operation of the new government will be, that there will be a plurality of the former to combine against the interest of the latter, and that, consequently, it will be dangerous to put it in their power to do so. I would join with him in sentiment if this were the case. Were this within the bounds of probability, I should be equally alarmed; but I think that those States which are contradistinguished as carrying States, from the non-importing States, will be but few. I suppose the southern States will be considered by all as under the latter description. Some other States have been mentioned by an honorable member on the same

side, which are not considered as carrying States. New Jersey and Connecticut can by no means be enumerated among the carrying States. They receive their supplies through New York. Here then is a plurality of non-importing States. I could add another, if necessary. Delaware, though situated upon the water, is upon the list of non-carrying States. I might say that a great part of New Hampshire is so. I believe a majority of the people of that State receive their supplies from Massachusetts, Rhode Island, and Connecticut. Might I not add all those States which will be admitted hereafter into the Union? These will be non-carrying States, and will support Virginia in case the carrying States should attempt to combine against the rest. This objection must therefore fall to the ground.

#### THE BRITISH TREATY.

Mr. Madison delivered the subjoined speech, in the House of Representatives of the United States, on the fifteenth of April, 1796.\*

MR. CHAIRMAN: The subject now under the consideration of the committee is of such vast extent, of such vital importance to this country, and involves so many topics which demand minute investigation, that I wish, at setting out, to be understood as not pretending to go through all the observations that may be applicable to its circumstances, but as endeavoring to present it in a mere general view, persuaded that the omissions I shall make, will be amply supplied by other gentlemen who are to follow me in the discussion.

The proposition, sir, immediately before the committee, amounts to this; that the treaty lately made with Great Britain ought to be directly carried into effect, by all such means and provisions as are peculiarly within the province and the competency of the House of Representatives to supply. This, sir, is the substance of the point immediately in question; but it will, in examining it, be proper to keep constantly in view another proposition which was made yesterday, by the gentleman from Pennsylvania,† and referred to the committee, and which will be taken up of course, if the immediate question shall be decided in the negative.

Sir, if the proposition for carrying the treaty into effect be agreed to by the House, it must necessarily be upon some one or other of the three following considerations: That the legislature is bound by a constitutional necessity to

pass the requisite laws, without examining the treaty or considering its merits—or that, on due examination, the treaty is deemed to be in itself a good one—or that, apart from these considerations, there shall appear extraneous reasons of sufficient weight to induce the House to carry the treaty into effect, even though it be in itself a bad treaty. The first of these considerations, however, is now completely excluded by the late decision of the House, that they have a right to judge of the expediency or inexpediency of passing laws relative to treaties; the question then first to be examined by the committee, is that which relates to the merits of the present treaty. I will now, therefore, proceed to discuss those merits, and to present them to the committee under three different aspects. The first, as it relates to the execution of the treaty of peace, made in the year 1783. The second, as it bears upon and determines the several points in the law of nations connected with it. And the third, as it infringes upon and may be supposed to affect the commercial intercourse of the two nations.

Sir, in animadverting upon the first of these, I will not take upon me the invidious office of inquiring which party it is to whom the censure may justly be ascribed of having more than the other contributed to the delay of its execution, though I am far from entertaining any desire to shrink from the task, under an apprehension that the result might be disadvantageous to this country. The present treaty has itself, in express terms, waived this inquiry, and professes that its purpose is to adjust all controversies on the subjects of which it is conversant, without regard to the mutual complaints or pretensions of the parties. Naturally, therefore, and most justly was it to be expected, that the arrangements for carrying that treaty into effect, would have been founded on the most exact, scrupu-

\* See introduction at page 104.

† Mr. Maclay, who moved a resolution "that it is not expedient at this time to concur in passing the laws necessary for carrying the said treaty into effect."

lous, and equitable reciprocity. But has this been the case, sir? I venture to say that it has not, and it grieves me to add, what nevertheless truth and justice compel me to declare, that, on the contrary, the arrangements were founded on the grossest violation of this principle. This, sir, is undoubtedly strong language, and as such I should be one of the last men living to give it utterance, if I were not supported in it by facts no less strong and unequivocal. There are two articles in the old treaty, for the execution of which no provision whatsoever is made in the new one. The first is that which relates to the restitution of, or compensation for, the negroes and other property carried away by the British. The second, that which provides for the surrender to the United States of the posts, so long withheld by them, on our territory. The article that remains unexecuted on the part of the United States, is that which stipulates for the payment of all *bona fide* debts owing to British creditors; and the present treaty guarantees the carrying of this article into the most complete effect by the United States, together with all damages sustained by the delay, even to the most rigid extent of exaction, while it contains no stipulation whatever, on the part of Great Britain, for the faithful performance of the articles left unexecuted by her. Look to the treaty, sir, and you will find nothing like it, nothing allusive to it. No, on the contrary, she is entirely and formally absolved from her obligation to fulfil that article which relates to the negroes, and is discharged from making any compensation whatsoever for her having delayed to fulfil that which provides for the surrender of the posts.

I am aware, sir, of its being urged in apology, or by way of extenuation for these very unequal stipulations, that the injury which may possibly be sustained by us, in consequence of the detention of the posts by the British government, is not susceptible of an accurate valuation; that between such an injury and money there is no common measure, and that therefore the wrong is incapable of liquidation, and affords no fair basis for a calculation of pecuniary damages. This apology, sir, may appear plausible, but it is by no means satisfactory. Commissioners might easily have been appointed (as they are, vested, too, with full discretion for other purposes) to take charge of this subject, with instructions to do what they could, if unable to do what they ought, and if incapable of effecting positive justice, at least to mitigate the injustice of doing nothing.

For the very extraordinary abandonment of the compensation due for the negroes and other property carried off by the British, apologies have also been lamely attempted; and these apologies demand consideration. It is said to be at least doubtful whether this claim is authorized by the seventh article of the treaty of peace, and that Great Britain has uniformly denied the meaning put by the United States on that article. In reply to these assertions, it is

sufficient for me to remark, that so far from its being true that Great Britain has uniformly denied the American construction of this article, it is susceptible of positive proof, that till very lately, Great Britain has uniformly admitted our construction of it, and that she has rejected the claim on no other ground than the alleged violation of the fourth article on the part of the United States. But on the supposition that it had been true, that Great Britain had uniformly asserted a different construction of the article, and refused to accede to ours, I beg leave to ask the House what ought to have been done? Ought we to have acceded at once to her construction? You will anticipate me, sir, in saying, assuredly not. Each party had an equal right to interpret the compact; and if they could not agree, they ought to have done in this what they did in other cases where they could not agree; that is, have referred the settlement of the meaning of the compact to arbitration: but, for us to give up the claim altogether because the other party to the compact thought proper to disallow our construction of it, was in effect to admit nothing less than that Great Britain had a better right than the United States to explain the point in controversy, or that the United States had done something which in justice called for a sacrifice of one of their essential rights.

From this view of the subject, sir, I consider it to be evident, that the arrangements in this treaty which relate to the treaty of peace of 1783, are in several instances deficient both in justice and reciprocity. And here a circumstance occurs, that in my opinion deserves the very particular attention of the committee. From the face of the treaty generally, and particularly from the order of the articles, it would seem that the compensation for the spoiliations on our trade have been combined with the execution of the treaty of peace, and may therefore have been viewed as a substitute for the equivalent stipulated for the negroes. If this be really the meaning of the instrument, it cannot be the less obnoxious to reasonable and fair judges. No man can be more firmly convinced than I myself am, of the perfect justice on which the claims of the merchants on Great Britain are founded, nor can any one be more desirous to see them fully indemnified. But surely, sir, it will not be asserted that compensation to them is a just substitute for the compensation due to others. It is impossible that any claims can be better founded than those of the sufferers under the seventh article of the treaty of peace; because they are supported by positive and acknowledged stipulation, as well as by equity and right. Just and undeniable as the claims of the merchants may be, and certainly are, the United States cannot be obliged to take more care of them than of the claims equally just and unquestionable of other citizens; much less to sacrifice the latter to the former. To set this matter in a light that will exhibit it in the clearest and most familiar way



possible to the understanding and the bosom of every member in this house, I will invert the case. Let us suppose for a moment, that instead of relinquishing the claims for property wrongfully carried off at the close of the war, and obtaining stipulations in favor of the mercantile claims, the mercantile claims had been relinquished, and the other claims provided for—I ask, would not the complaints of the merchants have been as universal and as loud as they would have been just?

Sir, besides the omissions in favor of Great Britain, which I have already pointed out, as particularly connected with the execution of the treaty of peace, the committee will perceive that there are conditions annexed to the partial execution of it in the surrender of the western posts, which increase the general inequality of this part of the treaty, and essentially affect the value of those objects. I beseech the committee to examine the point with the attention a subject of so very important a character demands.

The value of the posts to the United States is to be estimated by the influence of those posts: first, on the trade with the Indians, and secondly, on the temper and conduct of the Indians to the United States.

Their influence on the Indian trade depends principally on the exclusive command they give to the several carrying places connected with the posts. These places are understood to be of such importance in this respect, that those who possess them exclusively will have a monopoly of that lucrative intercourse with a great part of the savage nations. Great Britain having exclusively possessed those places, has possessed all those advantages without a rival; and it was reasonably enough expected, that with the exclusive possession of the posts, the exclusive benefits of that trade and intercourse would be transferred also; but by the treaty now under consideration, the carrying places are to be enjoyed in common, and it will be determined by the respective advantages under which British and American traders will engage in the trade, which of them is to have the larger share in it. In this point of view, even if in no other, I view this regulation in the treaty as highly impolitic and injurious to the interests of this country. I need not dwell upon the signal advantages the British will have in their superior capital, which we shall have to encounter in all our commercial rivalships; but there is another consideration which ought to have, and no doubt will have great weight with the committee on this subject. The goods imported for the Indian trade through Canada pay no duties, whilst those imported through the United States for that trade will have paid duties from seven to ten *per centum*. At the same time, every man must see that a drawback is impracticable, or would be attended with an expense which the business would not bear. Whatever the value or the importance, therefore, which the posts may be sup-

posed to derive from those considerations, they are in a great measure stripped of them by the condition annexed by this treaty to the surrender of the posts. Instead of securing, as it ought to have done, a monopoly in our favor, the carrying places are made common to both countries under circumstances which will, in all probability, throw a monopoly into the hands of Great Britain. Nor is this a transient or a temporary evil, for that article of the treaty is to last for ever. As to the influence of the posts on the conduct of the Indians, it is well known to depend chiefly upon their influence on the Indian trade. In proportion, therefore, as the condition annexed to the surrender of the posts affects the one, it must affect the other. So long and in such degree as the British continue to enjoy the Indian trade, they will continue to influence the Indian conduct; and though that should not be in the same degree as heretofore, it will be at least in a degree sufficiently great to pass sentence of condemnation on the article in question.

Another very extraordinary feature in this part of the treaty, sir, is the permission that it grants to aliens to hold lands in perpetuity. I will not inquire how far this may be authorized by constitutional principles, but I will always maintain that there cannot be found, in any treaty that ever was made, either where territory was ceded, or where it was acknowledged by one nation to another, one other such stipulation. Although I admit, that in such cases it has been common, and may be right, to make regulations for the conservation of the property of the inhabitants, yet I believe it will appear that in every case of the kind that has occurred, the owners of landed property, when they were so favored, were either called upon to swear allegiance to the new sovereign, or compelled to dispose of their landed property within a reasonable time.

Sir, the stipulation by which all the ports of the United States are to open to Great Britain, as a valuable consideration for, or condition upon which those of one of her unimportant provinces are to be opened to us in return, is marked with such signal inequality that it ought not only to be rejected, but marked with censure. Nor is the clause respecting the Mississippi less censurable. To me, indeed, it appears singularly reprehensible. Happy is it for the United States, that the adjustment of our claims with Spain has been brought about, before any evil operation of the clause has been experienced. But of the tendency of the thing, I am persuaded, there can be no doubt. It is the more remarkable that this extension of the privileges of Great Britain on the Mississippi, beyond those contained in the treaty of peace, should have been admitted into the new treaty, because, by the latter itself, the supposition is suggested that Great Britain may be deprived, by her real boundary, of all pretensions to a share in the waters and the banks of the Mississippi.



And now, sir, to turn to the second aspect, in which I have undertaken to examine the question; namely, as it determines the several points in the law of nations connected with it. And here, I must say, that the same want of real reciprocity, and the same sacrifice of the interests of the United States, are conspicuous. Sir, it is well known that the principle that "FREE SHIPS MAKE FREE GOODS," has ever been a great and favorite object with the United States; they have established this principle in all their treaties; they have witnessed with anxiety the general effort and the successful advances towards incorporating this principle in the law of nations—a principle friendly to all neutral nations, and particularly interesting to the United States. I know, sir, that it has before now been conceded, on the part of the United States, that the law of nations stands as the present treaty regulates it; but it does not follow that more than acquiescence in this doctrine is proper. There is an evident and a material distinction between silently acquiescing in it, and giving it the additional force and support of a formal and positive stipulation. The former is all that could have been required, and the latter is more than ought to have been unnecessarily yielded. The treaty is liable to similar objections in respect to the enumeration it contains of contraband articles, in which, sir, I am sorry to be obliged to remark, that the circumstances and interests of the United States, have been made to give way to the particular views of the other party, while the examples held out in our other treaties have been disregarded. Hemp, tar, pitch, turpentine, &c., important staples of this country, have, without even a pretext of reciprocity, been subjected to confiscation. No nation which produces these articles has, I believe, any treaties at present, making the same sacrifice, with the exception of Denmark, who, in the year 1780, by what means I know not, was induced to agree to an explanation of the treaty of 1670, by which these articles are declared to be contraband. Now, sir, it appears to me, that this same supplementary and explanatory agreement between Great Britain and Denmark, has been the model selected for the contraband list of the treaty, at present in question; the enumeration in the latter being transcribed, word for word, from the former, with a single exception, which, not only is in itself, but renders the whole transaction extremely remarkable. The article "HORSES," which stands as one part of the original, is entirely omitted in the copy; and what renders the omission more worthy of scrutiny, is, that though the treaty, in general, seems to have availed itself, wherever it readily could, of the authority of Vattel, the omission of horses is no less a departure from him, than from the original, from which that part of the treaty was copied. Indeed, the whole of this particular transaction seems fraught with singularity and just liability to suspicion; for, strange as

it may appear, it is certainly true, that the copy proceeded exactly from the original, till it got as far as the purposes of Great Britain required, and at that point stopped short. I entreat the committee to pay attention to this fact. After enumerating the articles that are to be deemed contraband, the Danish article goes on in the words following, viz.: "But it is expressly declared, that among contraband merchandises, shall not be comprehended fish and meats, whether fresh or salted; wheat, flour, corn, or other grain; beans, oil, wines, and generally whatever serves for the nourishment and support of life; all of which may at all times be sold and transported, like any other merchandises, even to places held by an enemy of the two crowns, provided they be not besieged or blockaded."

This view of the subject naturally leads me to make some observations on that clause of the treaty which relates to provisions, and which, to say the least of it, wears a very ambiguous and disagreeable countenance; or, to speak more precisely, seems to carry with it a necessary implication that provisions, though not bound to besieged or blockaded places, may according to the law of nations, as it now exists, be regarded and treated as contraband. According to the genuine law of nations, no articles, which are not expressly and generally contraband, are so, in any particular instance, except in the single case of their going to a place besieged; yet it is recognized by this treaty, that there are other cases in which provisions may be deemed contraband, from which recognition, implication fairly results, that one of those cases may be that which has been assumed and put in force by Great Britain, in relation to the United States. Such trivial cases, as might be devised by way of appurtenances to the law, that condemns what is bound to blockaded places, can by no means satisfy the import of the stipulation; because such cases cannot be presumed to have been in contemplation of the parties. And if the particular case, of provisions bound to a country at war, although not to a besieged place, was not meant to be one of the cases of contraband according to the existing law of nations, how necessary was it to have said so; and how easy and natural would that course have been, with the Danish example on the subject before their eyes.

On the supposition that provisions, in our own vessels, bound to countries at war with Great Britain, can be now seized by her for her own use, on the condition stipulated, this feature of the treaty, sir, presents itself in a very serious light indeed; especially if the doctrine be resorted to, that has been laid down by the executive in the letter of Mr. Jefferson, then Secretary of State, to Mr. Pinckney, on the 7th of September, 1793. This letter is a comment on the British instructions of June the 8th, 1793, for seizing neutral provisions. After stating the measure as a flagrant breach of the

law of nations, and as ruinous to our commerce and agriculture, it has the following paragraph: "This act, too, tends to draw us from that state of peace in which we are willing to remain. It is an essential character of neutrality to furnish no aids not stipulated by treaty"—that is, sir, by a treaty made prior to the war—"to one party, which we are not equally ready to furnish to the other. If we permit corn to be sent to Great Britain and her friends, we are equally bound to permit it to be sent to France. To restrain it would be a partiality that must lead to war; and between restraining it ourselves, and permitting her enemies to restrain it unrightfully, there is no difference. She would consider it as a mere pretext, of which she certainly would not agree to be the dupe; and on what honorable ground could we otherwise explain it? Thus we should see ourselves plunged, by this unauthorized act of Great Britain, into a war, with which we meddle not, and which we wish to avoid, if justice to all parties, and from all parties, will enable us to avoid it."\* Sir, I entreat the committee to give this very interesting executive document all the attention which it demands, and which they have in their power to bestow.

I am now, sir, come to that article of the treaty by which the sequestration of British property is prohibited; upon which I must say, that though I should, in all probability, be one of the last men existing, to have recourse to such an expedient for redress, I cannot approve of a perpetual and irrevocable abandonment of a defensive weapon, the existence of which may render the use of it unnecessary. Sir, there is an extraordinary peculiarity in the situation of this country, as it stands in its relations to Great Britain. As we have no fleets or armies, to command a respect for our rights, we ought to keep in our own hands all such means as our situation gives us. This article, sir, is another instance of the very little regard that has been paid to reciprocity. It is well known, that British subjects now have, and are likely always to have in this country, a vast quantity of property of the kind made sacred. American citizens; it is known, have little, and are likely to have little of the kind in Great Britain. If a real reciprocity was intended, why are not other kinds of private property, such as vessels and their cargoes, equally protected against violation? These, even within the jurisdiction of Great Britain, are left open to seizure and sequestration, if Great Britain shall find it expedient; and why is not property on the high seas, under the protection of the law of nations, which is said to be a part of the law of the land, made secure by a like stipulation? This would have given a face of equality and reciprocity to the bargain. But nothing of the sort makes a part of it. Where Great Britain has a particular interest at stake, the treaty watchfully provides for it; when the

United States have an equal interest at stake, and equally entitled to protection, it is abandoned to all the dangers which it has experienced.

Having taken this brief review of the positive evils in this part of the treaty, I might add the various omissions, which are chargeable upon it: but, as I shall not pretend to exhaust the subject, I will mention only one, and that is, the utterly neglecting to provide for the exhibition of sea papers; and, I cannot help regarding this omission as truly extraordinary, when I observe that in almost every modern treaty, and particularly in all our other treaties, an article on this subject has been regularly inserted. Indeed it has become almost an article of course in the treaties of the present century.

I shall now, sir, consider the aspect in which the commercial articles of this treaty present themselves for consideration. In the free intercourse stipulated between the United States and Great Britain, it cannot be pretended that any advantage is gained by the former. A treaty is surely not necessary to induce Great Britain to receive our raw materials and to sell us her manufactures. Let us, on the other hand, consider what is given up by the United States.

It is well known that when our government came into operation, the tonnage of America, employed in the British trade, bore a very inconsiderable proportion to the British tonnage. There being nothing on our side to counteract the influence of capital and other circumstances on the British side, that disproportion was the natural state of things. As some small balance to the British advantages, and particularly that of her capital, our laws have made several regulations in favor of our shipping, among which is the important encouragement resulting from the difference of ten *per centum* in the duties paid by American and foreign vessels. Under this encouragement, the American tonnage has increased in a very respectable degree of proportion to the British tonnage. Great Britain has never deemed it prudent to frustrate or diminish the effects of this, by attempting any countervailing measures for her shipping; being aware, no doubt, that we could easily preserve the difference by further measures on our side: but by this treaty, she has reserved to herself the right to take such countervailing measures against our existing regulations, and we have surrendered our right to pursue further defensive measures against the influence of her capital. It is justly to be apprehended, therefore, that under such a restoration of things to their former state, the American tonnage will relapse into its former disproportion to the British tonnage.

Sir, when I turn my attention to that branch of the subject which relates to the West Indies, I see still greater cause for astonishment and dissatisfaction. As the treaty now stands, Great Britain is left as free, as she ever has been. **to**

\* Writings of Thomas Jefferson. Ed. 1864, vol. 4, page 61.

continue to herself and her shipping, the entire monopoly of the intercourse. Recollecting, as I do, and as every member of the committee must do, the whole history of this subject, from the peace of 1783, through every subsequent stage of our independence, down to the mission of the late envoy, I find it impossible, adequately to express my astonishment, that any treaty of commerce should ever have been acceded to, that so entirely abandoned the very object for which alone such a treaty could have been contemplated; I never could have believed that the time was so near, when all the principles, claims and calculations, which have heretofore prevailed among all classes of people, in every part of the Union, on this interesting point, were to be so completely renounced. A treaty of commerce with Great Britain, excluding a reciprocity for our vessels in the West India trade, is a phenomenon which fills me with great surprise.

I may be told, perhaps, that in the first place, Great Britain grants to no other nation the privilege granted to the United States of trading at all with her West Indies, and that, in the second place, this is an important relaxation of the colonial system established among the nations of Europe. To the first of these observations, I reply, that no other nation bears the same relation to the West Indies as the United States; that the supplies of the United States are essential to those islands; and that the trade with them has been permitted purely on that account, and not as a beneficial privilege to the United States.

To the second, I reply, that it is not true, that the colony system requires an exclusion of foreign vessels from the carrying trade between the colonies and foreign countries. On the contrary, the principle and practice of the colony system are, to prohibit, as much as may be convenient, all trade between the colonies and foreign countries; but when such a trade is permitted at all, as necessary for the colonies, then to allow the vessels of such foreign countries a reciprocal right of being employed in the trade. Great Britain has accordingly restrained the trade of her islands with this country, as far as her interest in them will permit. But, has she allowed our vessels the reciprocal right to carry on the trade so far as it is not restrained?—No such thing. Here she enforces a monopoly in her own favor, contrary to justice, and contrary to the colonial system of every European nation that possesses any colonies; none of whom, without a single exception, ever open a trade between their colonies and other countries, without opening it equally to vessels on both sides. This is evidently nothing more than strict justice. A colony is a part of an empire. If a nation choose, she may prohibit all trade between a colony and a foreign country, as she may between any other part of her dominions and a foreign country; but if she permit such a trade at all, it must be free to vessels on both sides,

as well in the case of colonies as of any other part of her dominions. Great Britain has the same right to prohibit foreign trade between London and the United States, as between Jamaica and the United States; but if no such prohibition be made with respect to either, she is equally bound to allow foreign vessels a common right with her own in both. If Great Britain were to say, that no trade whatever should be carried on between London and the United States, she would exercise a right of which we could not reasonably complain. If she were to say, that no American vessels should be employed in the trade, it would produce just complaints, and justify a reciprocal regulation as to her vessels. The case of the trade from a port in the West Indies is precisely similar.

In order that the omission of the treaty to provide a reciprocity for our vessels in the West India trade, may be placed in its true light, it will be proper to attend to another part of the treaty, which ties up the hands of this country against every effort for making it the interest of Great Britain to yield to our reasonable claims. For this end I beg leave to point out to the committee the clause which restrains the United States from imposing prohibitions or duties on Great Britain, in any case, which shall not extend to all other nations, and to observe, that the clause makes it impossible to operate on the unreasonable policy of that nation, without suspending our commerce at the same time with all other nations, whose regulations, with respect to us, may be ever so favorable and satisfactory.

The fifteenth article, Mr. Chairman, has another extraordinary feature, which I should imagine must strike every observer. In other treaties, which profess to put the parties on the footing of the most favored nation, it is stipulated that where new favors are granted to a particular nation in return for favors received, the party claiming the new favor shall pay the price of it. This is just and proper where the footing of the most favored nation is established at all. But this article gives to Great Britain the full benefit of all privileges that may be granted to any other nation, without requiring from her the same or equivalent privileges with those granted by such nation. Hence it will happen, that if Spain, Portugal or France shall open their colonial ports to the United States, in consideration of certain privileges in our trade, the same privileges will result gratis and *ipso facto* to Great Britain. This stipulation, sir, I consider as peculiarly impolitic, and such an one as cannot fail to form, in the view of the committee, a very solid and weighty objection to the treaty.

I dare say, sir, that by the advocates of the treaty great stress will be laid on the article relating to the East Indies. To those who are better acquainted with the subject than I can pretend to be, I shall resign the task of examining and explaining that part of the subject

With two observations, however, I must trouble the committee, before I drop the subject of this article; one is, that some gentlemen, as judicious and well informed as any who can be consulted, declare that they consider this article as affording not a shadow of advantage to the United States. The other is, that no privilege is stipulated in it, which has not heretofore been uniformly granted without stipulation; and as the grant can have proceeded from no motive but a pure regard to the British interest in that country, there was every reasonable security that the trade would continue open as it had been, under the same consideration.

Such, Mr. Chairman, being the character of this treaty, with respect to the execution of the treaty of peace, the great principles of the law of nations, and the regulations of commerce, it never can be viewed as having any claim to be carried into effect on its own account. Is there then any consideration, extraneous to the treaty, that can furnish the requisite motives? On this part of the subject, the House is wholly without information. The continuance of the spoiliations on our trade, and the impressment of our seamen, whether to be understood as practical comments on the treaty, or as infractions of it, cannot but enforce on the minds of the committee the most serious reflections. And here, sir, I beg leave to refer once more to the passage I have already read, extracted from the letter of Mr. Jefferson to Mr. Pinckney, and to ask if, as there stated by the executive, our neutrality and peace are to be exposed, by permitting practices of that kind, what must be thought of our giving effect, in the midst of such practices, to a treaty from which a countenance may be derived by that nation for going on further with them?

I am aware that the executive, notwithstanding the doctrine and policy laid down as above, has finally concurred in the treaty under all these circumstances. But I do not consider that as invalidating the reasoning drawn from the present state of things. I may be treading on delicate ground, but I cannot think it improper to remark, because it is a known fact, that the executive paused for some weeks after the concurrence of the Senate, before he ratified the treaty with his signature; and I think it may fairly be presumed, that the true grounds of that pause were the renewal of spoiliations, and a recollection of the light in which they had been represented; that, on that supposition, he was probably influenced in signing the treaty when he did, by an expectation that such a mark of confidence in the British government would produce an abolition of the unlawful proceeding, and consequently, if it were foreseen that the spoiliations would have been continued, as we find them to be, the treaty would not have been then signed, or if it had not been then signed, it would not be signed under the circumstances of the moment, when it falls under our consideration.

I shall conclude, Mr. Chairman, with taking

notice of two considerations, which have been made great use of by way of inducing Congress to carry the treaty into effect. In the first place, it has been said, that the greater part of the treaty is to continue in force for no longer time than two years after the termination of the present war in Europe; and that no very great evils can grow out of it in that short period. To this I reply, that ten of the articles, containing very objectionable stipulations, are perpetual; and that, in the next place, it will be in the power of Great Britain, at the expiration of the other articles, to produce the same causes for the renewal of them, as are now urged in their support. If we are now to enforce the treaty, lest Great Britain should stir up the Indians, and refuse to pay our merchants for the property of which she has plundered them, can she not, at the end of two or three years, plunder them again, to the same or a greater amount? Cannot the same apprehensions be revived with respect to the Indians, and will not the arguments then be as strong as they are now, for renewing the same treaty, or for making any other equal sacrifices that her purposes may dictate?

It has been asked, What will be the consequences of refusing to carry the treaty into effect? I answer, that the only supposable consequence is, that the executive, if governed by the prudence and patriotism which I do not doubt will govern that department, will of course pursue the measures most likely to obtain a reconsideration and remodification of the offensive parts of the treaty. The idea of war as a consequence of refusing to give effect to the treaty is too visionary and incredible to be admitted into the question. No man will say that the United States, if they be really an independent people, have not a right to judge of their own interests, and to decline any treaty that does not duly provide for them. A refusal, therefore, in such cases, can afford no cause, nor pretext, nor provocation for war, or for any just resentment. But, apart from this, is it conceivable that Great Britain, with all the dangers and embarrassments that are thickening on her, will wantonly make war on a country which is the best market she has in the world for her manufactures, which pays her an annual balance, in specie, of ten or twelve millions of dollars, and whose supplies, moreover, are essential to an important part of her dominions? Such a degree of infatuation ought not to be ascribed to any country. And, at the present crisis, for reasons well known, an unprovoked war from Great Britain, on this country, would argue a degree of madness greater than any other circumstances that can well be imagined.

With all the objections, therefore, to the treaty, which I have stated, I hope it will not now be carried into effect, and that an opportunity will take place for reconsidering the subject, on principles more just and favorable to the United States.

## JOHN JAY.

AMONG those Huguenots who were compelled, on the revocation of the edict of Nantes, to abandon their country or renounce their religion, was Pierre Jay, the great grandfather of the subject of the present memoir. After suffering great contumely at the hands of the Catholics, he fled to England, managing, through the strictest precaution, to carry with him a sufficiency adequate to the support of himself and his family. Having escaped from persecution and reached a friendly country, nothing remained to cause anxiety but the fate of his son Augustus, who had gone on a voyage to Africa, and would probably return to France without having been apprised of the troubles and flight of his family. This accordingly happened. On his arrival at Rochelle he found himself in a situation not easy to be described. The persecution was proceeding with increasing severity, and every circumstance pressed him to decide, without delay, on the measures proper to pursue. The kindness of his friends facilitated every necessary arrangement for his departure, and in a short time he embarked for Charleston in South Carolina. Finding the climate of that locality unfavorable to his health, he went to Philadelphia, and from thence to New York. Here he met many friends who had left Rochelle to escape the Popish persecution, and soon established himself in business. In 1697 he married a daughter of Mr. Balthazar, by whom he had four children, the youngest a son, "whom, in honor of his father, he named Peter." This son married a daughter of Jacobus Van Cortlandt, in 1728, and was blessed with ten children.

John Jay, the eighth child of Peter, was born in the city of New York, on the twelfth day of December, 1745. At an early period he manifested a grave and studious disposition. Under the care and instruction of his mother, he acquired the rudiments of English and the Latin grammar, and, at the age of eight years, was placed at a school kept by the Reverend Mr. Stoepe, at New Rochelle. Here he remained about two years, continuing his subsequent studies at home, under a private tutor, until he reached the age of fourteen years. In 1760 he entered the Freshman class of King's (now Columbia) College, where he applied himself with resolution and perseverance. His studious habits and correct deportment acquired for him the friendship of the President, Dr. Samuel Johnson, who, on his retirement from the college, during the third year of young Jay's course, wrote a letter to his favorite pupil, inviting him to visit him, and assuring him of his prayers that he might "continue to act a good part." On the fifteenth of May, 1764, Mr. Jay graduated with the highest honors of his class, and two weeks after, entered the office of Mr. Benjamin Kissam, as a student at law. "His talents and virtues gave at that period," says the celebrated Lindley Murray,\* "pleasing indications of future eminence. He was remarkable for strong reasoning powers, comprehensive views, indefatigable application, and uncommon firmness of mind. With these qualifications, added to a just taste in literature, and ample stores of learning and knowledge, he was happily prepared to enter on that career of public virtue by which he was afterward honorably distinguished, and made instrumental in promoting the good of his country." On his admission to the bar in 1768, he entered into partner-

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\* Lindley Murray, the celebrated author of several works on grammar and religion, was a fellow-student with Mr. Jay in the office of Mr. Kissam.—*Murray's Memoir*.

ship with Robert R. Livingston, afterward Chancellor of the State of New York, and immediately commenced an extensive and profitable practice.

In 1774 Mr. Jay married Sarah, the youngest daughter of William Livingston, afterward Governor of New Jersey, and a political writer of great wit and power. At this period his prospects of domestic happiness and professional eminence were unusually brilliant; but the storm of the Revolution soon darkened the political horizon, and he was called upon to support the rights of his countrymen, abroad and at home. On the passage of the Boston Port Bill, a meeting was holden in New York, "to consult on the measures proper to be pursued in consequence of the late extraordinary advices received from England," and a committee of fifty was organized to correspond with the other Colonies "on all matters of moment." Of this committee Mr. Jay was an active member, being placed on a sub-committee, appointed to prepare answers to whatever letters might be received. In this position his services were of the highest importance.\*

On the fifth day of September, 1774, Mr. Jay took his seat in the Congress at Philadelphia, as a delegate from New York. He was then in the twenty-ninth year of his age, and probably the youngest member of that body. The first day of the session, Congress appointed a committee "to state the rights of the Colonies in general, the several instances in which those rights are violated or infringed, and the means most proper to be pursued for obtaining a restoration of them." Mr. Jay was a member of that committee, and soon after was placed on another for preparing an address to the inhabitants of Great Britain, and a memorial to the people of British America. The preparation of the former was assigned to him. To secure himself from interruption, he left his lodgings and shut himself up in a neighboring tavern, and there completed that eloquent state paper which Mr. Jefferson declared to be "a production, certainly, of the finest pen in America," and which elicited the highest applause and admiration, both at home and abroad.† On the return of Mr. Jay from the Congress to New York, he was elected a member of a *Committee of Observation* "for carrying into effect the measures proposed for interrupting the commerce of Great Britain with her colonies," and shortly after a member of a committee of *Association*. This committee was invested with general undefined powers, and in the absence of all legal authority, was not unmindful of the interests of the people which had been assigned to its care. They called out the militia, perfected their discipline, and ordered them to patrol the streets by night, to prevent any disobedience to the "people's rules concerning exportation." They also addressed a letter to the Lord Mayor and magistrates of London, on the subject of American grievances. This letter bore the signature of Mr. Jay. The Provincial Congress assembled at New York on the twenty-eighth of May, and assuming the powers of government, relieved this committee of its responsibility.

The second Congress assembled at Philadelphia, on the tenth of May, 1775, where Mr. Jay attended as a member. The battle of Lexington had occurred a short time previous to the meeting, and it was apparent that the English ministry purposed to use force wherever they should find it necessary to carry out their designs. The defence of New York now attracted the attention of Congress, and application was made by the New York members for advice as to the course proper to be observed by their constituents, in the event of an arrival of British armament at their city. Congress recommended that the people should "not commence hostilities, but to repel force by force, and not to permit the British to erect fortifications, or to cut off the communication between the town and country." But it being evident that an organized force would be necessary to carry out even the defensive which had been recommended, Congress took measures to raise a militia, and adopted a code of "*Rules and Regulations of the American Army*." On the appointment of the subordinate generals, a few days after Washington was chosen commander-in-chief, Mr. Jay proposed Mr. Sullivan, then a delegate in Congress from New Hampshire, saying "that his *good sense* was known to the House, and as to his military talents, he would take his chance for them." The nomination was confirmed, and the

\* This meeting of the citizens of New York, was holden on the 16th of May, 1774. The minutes of the committee appointed by them, are still preserved in the library of the New York Historical Society, and form a valuable and interesting document.

† Autobiography; in the Writings of Thomas Jefferson. Ed. 1858, vol. 1, page 10.

discernment which prompted it was abundantly justified by General Sullivan's active and useful career.\* About this time Mr. Jay prepared the letter *To the oppressed Inhabitants of Canada*, and that to the *People of Ireland*, both of which evince the deepest classic learning and religious patriotism.

In the fall of 1775, he received a commission of "colonel of the second regiment of militia of foot, of the city of New York," which he accepted, but the pressure of his civil duties prevented any active military service, and he remained at his post in Congress. "Some time in the course of this year," says Mr. Jay's biographer, "probably about the month of November, Congress was informed that a foreigner was then in Philadelphia, who was desirous of making to them an important and confidential communication. This intimation having been several times repeated, a committee, consisting of Mr. Jay, Dr. Franklin, and Mr. Jefferson, was appointed to hear what the foreigner had to say. These gentlemen agreed to meet him in one of the committee rooms in Carpenter's Hall. At the time appointed they went there, and found already arrived an elderly lame gentleman, having the appearance of an old wounded French officer. They told him they were authorized to receive his communication; upon which he said that his most Christian majesty had heard with pleasure of the exertions made by the American colonies in defence of their rights and privileges; that his majesty wished them success, and would, whenever it should be necessary, manifest more openly his friendly sentiment towards them. The committee requested to know his authority for giving these assurances. He answered only by drawing his hand across his throat, and saying, 'Gentlemen, I shall take care of my head.' They then asked what demonstrations of friendship they might expect from the king of France. 'Gentlemen,' answered the foreigner, 'if you want arms, you shall have them; if you want ammunition, you shall have it; if you want money, you shall have it.' The committee observed that these assurances were indeed important, but again desired to know by what authority they were made. 'Gentlemen,' said he, repeating his former gesture, 'I shall take care of my head!' and this was the only answer they could obtain from him. He was seen in Philadelphia no more. It was the opinion of the committee that he was a secret agent of the French court, directed to give these indirect assurances, but in such a manner that he might be disavowed if necessary. Mr. Jay stated that his communications were not without their effect on the proceedings of this Congress."

In April of the next year, while attending in Congress, Mr. Jay was elected a member of the Colonial Convention or Congress of New York, in which assembly he took his seat on the twenty-fifth of May following. Here he remained during the rest of the year, constantly and actively engaged. On the thirty-first of May he reported a series of resolutions, calling on the people to elect deputies to a new convention, with power to establish a form of government. Those resolutions were adopted, when the elections were held, and he was returned to the new convention.

On the arrival of Lord Howe and his army, in June, 1776, the convention adjourned to White Plains, a village about thirty miles north of New York. Here, on the ninth of July following, the new convention assembled. The same day the Declaration of Independence was announced to that body, and immediately referred to a committee, of which Mr. Jay was chairman. He "almost instantaneously" reported the subjoined resolution, which was unanimously adopted: "*Resolved unanimously*, That the reasons assigned by the Continental Congress for declaring these United Colonies free and independent States are cogent and conclusive, and that while we lament the cruel necessity which has rendered this measure unavoidable, we approve the same, and will, at the risk of our lives and fortunes, join with the other colonies in supporting it."

On the seventeenth of July, Mr. Jay was appointed on a secret committee, for the purpose of obstructing the navigation of the Hudson, and harassing Lord Howe's fleet, a part of which had passed up that river. At this crisis, he displayed the greatest zeal and energy. He was sent by the committee to Connecticut, to obtain a supply of cannon and shot, and transport them to the river, with authority "to impress carriages, teams, sloops, and horses, and to call

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\* Life of John Jay, vol. 1, page 88.

out detachments of the militia, and generally to do, or cause to be done at his discretion, **all** such matters and things as he may deem necessary or expedient to forward and complete the business committed to his care." Invested with this authority, he obtained conveyances, and in a short time delivered twenty cannon at West Point.

In August, 1776, the convention appointed a committee to prepare and report a constitution for the State. Of this committee Mr. Jay was chairman, and its duty appears to have been assigned to him. On the twelfth of March, 1777, the committee submitted a plan of government, which, with several amendments, was adopted on the twentieth of April following. A short time before the final question on the constitution was taken, Mr. Jay was called to attend his dying mother, and thereby prevented from offering some amendments that he deemed important, and opposing others that had been made during his absence. In a letter written about this time, he expresses himself with great freedom on the hurried manner in which the business had been concluded, and pointed out his objections. "Though the birth of the constitution is," says he, "in my opinion premature, I shall, nevertheless, do all in my power to nurse and keep it alive; being far from approving the Spartan law, which encouraged parents to destroy such of their children as, perhaps by some cross accident, might come into this world defective and misshapen."\*

New York being now provided with a constitution, Mr. Jay was appointed chief justice of the Supreme Court, and soon after a member of the Council of Safety. On the ninth of September, the Supreme Court commenced its first term, and Judge Jay delivered the charge to the Grand Jury. The interest attached to this event was of the highest importance. The government under which the people had been reared, and which their habits and education had taught them to venerate and love, had been abolished, and a new one raised, amid the tumult of war, and in the presence of a haughty and victorious enemy. The success of the undertaking was by no means certain. Burgoyne, with a large army, had penetrated the north, and was approaching the Hudson at Albany, while another army was preparing to effect a junction with the first. Under these circumstances, John Jay, "with an unruffled mind and undaunted eye, looked forward to the end of his labors, with the full assurance of the righteousness of the cause and the favor of heaven."

"It affords me, gentlemen," he said, "very sensible pleasure to congratulate you on the dawn of that free, mild, and equal government which now begins to rise and break from amidst those clouds of anarchy, confusion, and licentiousness, which the arbitrary and violent domination of the king of Great Britain had spread, in greater or less degrees, throughout this and the other American States. And it gives me particular satisfaction to remark, that the first fruits of our excellent constitution appear in a part of this State, whose inhabitants have distinguished themselves by having unanimously endeavored to deserve them.

"This is one of those signal instances in which Divine Providence has made the tyranny of princes instrumental in breaking the chains of their subjects, and rendered the most inhuman designs productive of the best consequences to those against whom they were intended.

"The infatuated sovereign of Britain, forgetful that kings were the servants, not the proprietors, and ought to be the fathers, not the incendiaries of their people, hath, by destroying our former constitutions, enabled us to erect more eligible systems of government on their ruins; and, by unwarrantable attempts to *bind us, in all cases whatever*, has reduced us to the happy necessity of being *free from his control in any*.

"Whoever compares our present with our former constitution, will find abundant reason to rejoice in the exchange, and readily admit that all the calamities incident to this war, will be amply compensated by the many blessings flowing from this glorious revolution; a revolution which, in the whole course of its rise and progress, is distinguished by so many marks of the Divine favor and interposition, that no doubt can remain of its being finally accomplished.

"It was begun and has been supported in a manner so singular, and I may say miraculous, that when future ages shall read its history, they will be tempted to consider a great part of it

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\* Life of John Jay, vol. 1, page 69.



as fabulous. What, among other things, can appear more unworthy of credit, than that in an enlightened age, in a civilized and Christian country, in a nation so celebrated for humanity, as well as love of liberty and justice, as the *English* once justly were, a prince should arise, who, by the influence of corruption alone, should be able to seduce them into a combination to reduce three millions of his most loyal and affectionate subjects to absolute slavery, under pretence of a right, appertaining to God alone, of binding them in all cases whatever, not even excepting cases of conscience and religion? What can appear more improbable, although true, than that this prince, and this people, should obstinately steel their hearts and shut their ears against the most humble petitions and affectionate remonstrances; and unjustly determine, by violence and force, to execute designs which were reprobated by every principle of humanity, equity, gratitude, and policy—designs which would have been execrable, if intended against savages and enemies, and yet formed against men descended from the same common ancestors with themselves; men who had liberally contributed to their support, and cheerfully fought their battles, even in remote and baleful climates? Will it not appear extraordinary that thirteen colonies, the object of their wicked designs, divided by variety of governments and manners, should immediately become one people, and though without funds, without magazines, without disciplined troops, in the face of their enemies, unanimously determine to be free; and, undaunted by the power of Britain, refer their cause to the justice of the Almighty, and resolve to repel force by force? thereby presenting to the world an illustrious example of magnanimity and virtue scarcely to be paralleled. Will it not be matter of doubt and wonder, that, notwithstanding these difficulties, they should raise armies, establish funds, carry on commerce, grow rich by the spoils of their enemies, and bid defiance to the armies of Britain, the mercenaries of Germany, and the savages of the wilderness? But, however incredible these things may in future appear, we know them to be true, and we should always remember that the many remarkable and unexpected means and events, by which our wants have been supplied, and our enemies repelled or restrained, are such strong and striking proofs of the interposition of Heaven, that our having been hitherto delivered from the threatened bondage of Britain, ought, like the emancipation of the Jews from Egyptian servitude, to be for ever ascribed to its *true cause*, and instead of swelling our breasts with arrogant ideas of our prowess and importance, kindle in them a flame of gratitude and piety, which may consume all remains of vice and irreligion.

“Blessed be God! the time will now never arrive when the prince of a country, in another quarter of the globe, will command your obedience and hold you in vassalage. His consent has ceased to be necessary to enable you to enact laws essential to your welfare; nor will you, in future, be subject to the imperious sway of rulers, instructed to sacrifice your happiness, whenever it might be inconsistent with the ambitious views of their royal master.”

After referring to the perfection of the new Constitution, and the general satisfaction it afforded to the people, he continued: “Adequate security is also given to the rights of conscience and private judgment. They are, by nature, subject to no control but that of the Deity, and in that free situation they are now left. Every man is permitted to consider, to adore and to worship his Creator in the manner most agreeable to his conscience. No opinions are dictated; no rules of faith prescribed; no preference given to one sect to the prejudice of others. The constitution, however, has wisely declared, that the ‘liberty of conscience, thereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.’ In a word, the convention, by whom that constitution was formed, were of opinion, that the Gospel of CHRIST, like the ark of God, would not fall, though unsupported by the arm of flesh; and happy would it be for mankind if that opinion prevailed more generally.

“But let it be remembered, that whatever marks of wisdom, experience and patriotism there may be in your constitution, yet, like the beautiful symmetry, the just proportions, and elegant forms of our first parents, before their Maker breathed into them the breath of life, it is yet to be animated, and till then, may indeed excite admiration, but will be of no use—from the people it must receive its spirit, and by them be quickened. Let virtue, honor, the love of liberty and of science be, and remain, the soul of this constitution, and it will become the source of great

and extensive happiness to this and future generations. Vice, ignorance, and want of vigilance, will be the only enemies able to destroy it. Against these provide, and, of these, be for ever jealous. Every member of the State ought diligently to read and study the constitution of his country, and teach the rising generation to be free. By knowing their rights, they will sooner perceive when they are violated, and be the better prepared to defend and assert them.

"This, gentlemen, is the first court held under the authority of our constitution, and I hope its proceedings will be such, as to merit the approbation of the friends, and avoid giving cause of censure to the enemies of the present establishment."

As a judge of the Supreme Court, Mr. Jay was prevented by the Constitution of the State, from occupying any other office, except that of delegate to Congress on a *special occasion*. A *special occasion* was afforded when the dispute originated between the people of Vermont and the Legislature of New York; and he was elected on the 10th of November, 1778. In December following, he took his seat in Congress, and, on the resignation of Mr. Laurens, three days after, was elected in his place as President of that body. Here he remained until the twenty-seventh of September, 1779, when he was appointed Minister Plenipotentiary to Spain. On the twentieth of October he sailed, in company with M. Gerard, the French minister, on board the American frigate *Confederacy*. A few days out, the frigate was dismasted in a terrific storm, and with difficulty reached Martinico about the middle of December. From this place he sailed ten days after his arrival, and landed at Cadiz on the twenty-eighth of January, 1780.

Mr. Jay lost no time in going to Madrid. On his arrival at that place he discovered that the Spanish government were not inclined to enter into negotiations with him; and that although that government was at war with our common enemy, she was not disposed even to acknowledge our independence, unconditionally.\* While in this situation, he learned that Congress had resolved upon a singular expedient for raising funds, (on the presumption of the success of his mission,) by drawing on him for the payment of large sums at six months' sight. These bills soon were presented; and Mr. Jay accepted them; becoming personally responsible for a greater portion of them.†

Mr. Adams was appointed, in 1779, as sole minister plenipotentiary for peace, and at the same time to make a treaty of commerce with Great Britain. In 1781, Mr. Jay, Mr. Franklin, Mr. Laurens, and Mr. Jefferson, were associated with Mr. Adams, by Congress, in the commission for peace, and Mr. Adams' commission to negotiate a treaty of commerce was annulled. Early in the summer of 1782, having been informed of his appointment as commissioner, Mr. Jay left Madrid and arrived at Paris. Dr. Franklin was the only member of the commission at Paris on his arrival. Mr. Adams still remained at Amsterdam, Mr. Jefferson in America, and Mr. Laurens was in England, worn down with ill-health, debating whether he had not better return to the United States rather than proceed to Paris. Mr. Jay and Dr. Franklin, therefore, undertook the "skirmishing" business of the negotiation.

In July, Mr. Richard Oswald was empowered by the King of England "to treat, consult of, and conclude, with any commissioner or commissioners named, or to be named by the thirteen colonies or plantations in North America, and any body or bodies, corporate or politic, or any assembly or assemblies, or description of men, or any person or persons whatsoever, a peace or truce with the said colonies or plantations, or any part thereof." On the seventh of August, this commission was communicated to Mr. Jay and Dr. Franklin; the former thought that the expression of the commission did not acknowledge the independence of the United States, and insisted that it would be an acquiescence in that idea, if they should treat under the denomination of *colonies*. "I told the minister," he says, "that we neither could nor would treat with any nation in the world on any other than an equal footing."‡ This difficulty being obviated by the reception of a new commission, from England, describing the constituents of Mr. Jay

\* Life of John Jay, vol. 1, page 106, et seq.

† Flander's Lives of the Chief Justices. First series, pp. 276-328.

‡ Letter to Gouverneur Morris, October 13th, 1782. Jay's Writings.

and Dr. Franklin, as the Thirteen United States of America; the negotiation commenced, and, on the thirtieth of November, 1782; the provisional articles agreed upon were signed by Oswald on the one part and the four American commissioners on the other, Mr. Adams and Mr. Laurens having arrived at Paris pending the negotiation. The value of Mr. Jay's services in this important transaction cannot be overestimated.

On the sixteenth of May, 1784, Mr. Jay left Paris, and on the twenty-fourth of July, arrived at New York. "At length," he said in a letter to a friend, "I am arrived in the land of my nativity; and I bless God that it is also the land of light, liberty, and plenty. My emotions cannot be described."\* His fellow-citizens received him on his return with expressions of admiration and esteem. The corporation of New York presented to him an address accompanied with the freedom of the city, "as a public testimony of the respectful sentiments we entertain towards you, and as a pledge of our affection, and of our sincere wishes for your happiness."

On the meeting of the State Legislature in the fall, they appointed Mr. Jay a delegate to Congress, and on the sixth of December he took his seat in that assembly, which was convened at Trenton. A short time after, he accepted the position as Secretary of Foreign Affairs, to which place he had been appointed previous to his return to America. The prominent feature of this portion of his course was the renewal of negotiations with Spain, and the formation of the federal constitution. After the convention at Philadelphia had submitted the constitution to the people, a strong and violent opposition manifested itself. In this state of the public mind, Mr. Jay, associated with Hamilton and Madison, vindicated the proposed plan of government, in the essays entitled *The Federalist*, "equally admirable for the depth of its wisdom, the comprehensiveness of its views, the sagacity of its reflections, and the fearlessness, patriotism, candor, simplicity and elegance with which its truths are uttered and recommended."† In these papers, he discussed the dangers to be apprehended from foreign influence and power, and the authority of the Senate in making treaties.

In June, the convention of the State of New York, authorized to adopt or reject the federal constitution, met at Poughkeepsie. Of this convention Mr. Jay was a member, and the services he rendered were signal and important. The new Congress assembled on the fourth of March, 1789, and a few days after, Washington was elected President of the United States. After the passage of the Judiciary Bill, Mr. Jay was offered, by the President, a choice of the offices under the government. Expressing a preference for the Chief Justiceship, he was nominated, and on the twenty-sixth of September, 1789, was confirmed by the Senate. "In nominating you for the important station which you now fill," wrote President Washington, "I not only acted in conformity to my best judgment, but I trust I did a grateful thing to the good citizens of the United States; and I have a full confidence, that the love which you bear to our country, and a desire to promote the general happiness, will not suffer you to hesitate a moment to bring into action the talents, knowledge and integrity which are so necessary to be exercised at the head of that department, which must be considered as the keystone of our political fabric."‡ Mr. Jay's decisions, while he remained on the bench, evince a power of analysis, great logical acquirements, and a ready apprehension of principles.§

The next important service rendered by Mr. Jay, was the negotiation of the treaty with Great Britain, in 1794. He was appointed commissioner, and sailed from New York in May, and on the fifteenth of June arrived at London. Lord Grenville, a son of the celebrated George Grenville, was the negotiator on the part of Great Britain. The negotiation progressed favorably, as will be seen by the following, written by Mr. Jay to Washington, early in August: "Our prospects become more and more promising as we advance in the business . . . . A treaty of commerce is on the carpet . . . . The King observed to me the other day, 'Well, sir, I imagine you begin to see that your mission will probably be successful.'—'I am happy, may it please

\* *Life of John Jay*, vol. 1, page 188.

† Kent's Commentaries. The particular numbers of *The Federalist*, written by Mr. Jay, are given at page 126, ante.

‡ Washington to Jay, enclosing the latter's commission, 5th October, 1789. Washington's Writings, vol. 10, page 86.

§ Flander's Chief Justices, page 835.

your Majesty, to find that you entertain that idea.'—'Well, but don't you perceive that it is like to be so?'—'There are some recent circumstances (the answer to my representation, &c.) which induce me to flatter myself that it will be so.' He nodded with a smile, signifying that it was to those circumstances that he alluded. The conversation then turned to indifferent topics."\* The treaty was concluded on the nineteenth of November, 1794, and Mr. Jay returned to New York in the latter part of May of the next year. He was received by his fellow-citizens with demonstrations of gratitude and joy, and was attended to his dwelling by a large concourse, "amid the ringing of bells and the firing of cannon."

To many, Jay's treaty was objectionable: by those it was opposed with uncommon bitterness.† But it enlisted the ablest defenders: Hamilton, in its support, under the signature of Camillus, "extorted the admiration of his foes;" and Fisher Ames urged the passage of laws to give it effect, in a powerful speech, which drew forth tears, and made an impression that "will never be forgotten."‡

Mr. Jay was elected governor of New York two days before he arrived from England, and continued in office during six years. In the fall of the year 1800, he was solicited to consent to be a candidate for re-election, but declined, preferring to pass the remainder of his days in the retirement of his home. "The period is now arrived," he wrote, "at which I have for many years intended to retire from the cares of public life, and for which I have been for more than two years preparing; not perceiving, after mature consideration, that any duties require me to postpone it, I shall retire accordingly. But I retain and cherish the warmest affection for my country, as well as the esteem which I entertain for many, and the good will which I bear to all my fellow-citizens."§

On the nineteenth of December, he was nominated by President Adams to the Chief Justiceship of the United States, but his determination to retire from public life prevented his acceptance of that post. In the month of May following, he resigned the office of governor, "and passed the remainder of his days at the family estate at Westchester. He took no part in political affairs, and was not publicly heard of, except in two or three instances, when he answered inquiries concerning facts within his knowledge."|| In the night of the fourteenth of May, 1829, he was attacked with palsy, which, on the seventeenth, terminated his honorable and distinguished life. "History will assign to John Jay an elevated rank among the great," says Mr. Sullivan; "not only so, it will place him equally high among the pure and the virtuous. Throughout his useful life, he was governed by the dictates of an enlightened Christian conscience. He thought and acted under the conviction that there is an accountability far more serious than any which men can have to their fellow-men. The bravest soldiers and the worthiest statesmen have ever been those who believed in such accountability."

\* Jay to Washington, August 5th, 1794. *Life and Writings of Jay*, vol. 2, pp. 220-221.

† See page 108, ante.

‡ See Ames' speech at page 104, ante.

§ Jay to Richard Hatfield, chairman of Federal meeting, &c., 8th November, 1800. *Life and Writings of John Jay*, vol. 1, page 419.

|| Sullivan's *Public Men of the Revolution*, page 91.

## ADDRESS TO THE PEOPLE OF GREAT BRITAIN.

Congress, on the eleventh day of October, 1774, appointed Mr. Lee, Mr. Livingston and Mr. Jay a committee to prepare a memorial to the people of British America, and an address to the people of Great Britain. It was agreed in the committee that Mr. Lee should prepare the former, and that Mr. Jay should prepare the latter. On the eighteenth, Mr. Jay reported a draught of the address, which was discussed and amended on the day following, and on the twenty-first was approved by Congress.\*

**FRIENDS AND FELLOW-SUBJECTS:** When a nation led to greatness by the hand of liberty, and possessed of all the glory that heroism, munificence, and humanity can bestow, descends to the ungrateful task of forging chains for her friends and children, and instead of giving support to freedom, turns advocate for slavery and oppression, there is reason to suspect she has either ceased to be virtuous or been extremely negligent in the appointment of her rulers.

In almost every age, in repeated conflicts in long and bloody wars, as well civil as foreign, against many and powerful nations, against the open assaults of enemies, and the more dangerous treachery of friends, have the inhabitants of your island, your great and glorious ancestors, maintained their independence and transmitted the rights of men and the blessings of liberty to you, their posterity.

Be not surprised, therefore, that we who are descended from the same common ancestors, that we whose forefathers participated in all the rights, the liberties, and the constitution you so justly boast of, and who have carefully conveyed the same fair inheritance to us, guaranteed by the plighted faith of government, and the most solemn compacts with British sovereigns, should refuse to surrender them to men who found their claims on no principles of reason, and who prosecute them with a design that, by having our lives and property in their power, they may, with the greatest facility, enslave you.

The cause of America is now the object of universal attention; it has at length become very serious. This unhappy country has not only been oppressed, but abused and misrepresented; and the duty we owe to ourselves and posterity, to your interest, and the general welfare of the British empire, leads us to address you on this very important subject.

*Know, then,* That we consider ourselves, and do insist, that we are and ought to be as free

as our fellow-subjects in Britain, and that no power on earth has a right to take our property from us without our consent.

That we claim all the benefits secured to the subject by the English constitution, and particularly that inestimable one of trial by jury.

That we hold it essential to English liberty that no man be condemned unheard, or punished for supposed offences, without having an opportunity of making his defence.

That we think the legislature of Great Britain is not authorized by the constitution to establish a religion fraught with sanguinary and impious tenets; or to erect an arbitrary form of government in any quarter of the globe. These rights we, as well as you, deem sacred; and yet, sacred as they are, they have, with many others, been repeatedly and flagrantly violated.

Are not the proprietors of the soil of Great Britain lords of their own property? Can it be taken from them without their consent? Will they yield it to the arbitrary disposal of any man or number of men whatever? You know they will not.

Why, then, are the proprietors of the soil of America less lords of their property than you are of yours? or why should they submit it to the disposal of your Parliament, or any other parliament or council in the world, not of their election? Can the intervention of the sea that divides us cause disparity in rights, or can any reason be given why English subjects who live three thousand miles from the Royal Palace, should enjoy less liberty than those who are three hundred miles distant from it?

Reason looks with indignation on such distinctions, and freemen can never perceive their propriety. And yet, however chimerical and unjust such discriminations are, the Parliament assert that they have a right to bind us, in all cases, without exception, whether we consent or not; that they may take and use our property when and in what manner they please; that we are pensioners on their bounty for all that we possess, and can hold it no longer than they vouchsafe to permit. Such declarations we consider as heresies in English politics, and which can no more operate to deprive us of our property than the interdicts of the Pope can divest kings of sceptres which the laws of the land and the voice of the people have placed in their hands.

At the conclusion of the late war—a war rendered glorious by the abilities and integrity of a minister to whose efforts the British empire owes its safety and its fame; at the conclusion of this war, which was succeeded by an inglorious peace, formed under the auspices of a minister of principles, and of a family, unfriendly to the Protestant cause, and inimical to liberty—we say that at this period, and under the influence of that man, a plan for enslaving

\* Journals of Congress, 1774. Ed. 1828. Vol. 1, pp. 18-31. See ante, p. 48; also Jay's letter, in the Life of R. H. Lee. Vol. 1, pp. 270-272.

your fellow-subjects in America was concerted, and has ever since been pertinaciously carrying into execution.

Prior to this era you were content with drawing from us the wealth produced by our commerce: you restrained your trade in every way that could conduce to your emolument. You exercised unbounded sovereignty over the sea. You named the ports and nations to which alone our merchandise should be carried, and with whom alone we should trade; and though some of these restrictions were grievous, we nevertheless did not complain. We looked up to you as to our parent state, to which we were bound by the strongest ties, and were happy in being instrumental to your prosperity and your grandeur.

We call upon you, yourselves, to witness our loyalty and attachment to the common interest of the whole empire. Did we not, in the last war, add all the strength of this vast continent to the force which repelled our common enemy? Did we not leave our native shores and meet disease and death to promote the success of British arms in foreign climates? Did you not thank us for our zeal, and even reimburse us large sums of money, which you confessed we had advanced beyond our proportion, and far beyond our abilities? You did.

To what causes, then, are we to attribute the sudden change of treatment, and that system of slavery, which was prepared for us at the restoration of peace?

Before we had recovered from the distresses which ever attend war, an attempt was made to drain this country of all its money, by the oppressive stamp act. Paint, glass, and other commodities, which you would not permit us to purchase of other nations, were taxed; nay, although no wine is made in any country, subject to the British state, you prohibited our procuring it of foreigners without paying a tax, imposed by your Parliament, on all we imported. These, and many other impositions, were laid upon us; most unjustly and unconstitutionally, for the express purpose of raising a revenue. In order to silence complaint, it was indeed provided that this revenue should be expended in America for its protection and defence. These exactions, however, can receive no justification from a pretended necessity of protecting and defending us. They are lavishly squandered on court favorites and ministerial dependants, generally avowed enemies to America, and employing themselves by partial representations to traduce and embroil the colonies. For the necessary support of government here, we ever were and ever shall be ready to provide. And whenever the exigencies of the state may require it, we shall, as we have heretofore done, cheerfully contribute our full proportion of men and money. To enforce this unconstitutional and unjust scheme of taxation, every fence that the wisdom of our British ancestors had carefully erected against arbitrary power, has been violently thrown down in

America, and the inestimable right of trial by jury taken away, in cases that touch both life and property. It was ordained that whenever offences should be committed in the colonies against particular acts, imposing various duties and restrictions upon trade, the prosecutor might bring his action for the penalties in the Courts of Admiralty, by which means the subject lost the advantage of being tried by an honest, uninfluenced jury of the vicinage, and was subjected to the sad necessity of being judged by a single man, a creature of the crown, and according to the course of a law which exempts the prosecutor from the trouble of proving his accusation, and obliges the defendant either to evince his innocence or to suffer. To give this new judicatory the greater importance, and as if with design to protect false accusers, it is further provided, that the judge's certificate of there having been probable causes of seizure and prosecution, shall protect the prosecutor from actions at common law for recovery of damages.

By the course of our law, offences committed in such of the British dominions in which courts are established, and justice duly and regularly administered, shall be there tried by a jury of the vicinage. There the offenders and the witnesses are known, and the degree of credibility to be given to their testimony can be ascertained.

In all these colonies justice is regularly and impartially administered; and yet, by the construction of some, and the direction of other acts of Parliament, offenders are to be taken by force, together with all such persons as may be pointed out as witnesses, and carried to England, there to be tried in a distant land, by a jury of strangers, and subject to all the disadvantages that result from the want of friends, want of witnesses, and want of money.

When the design of raising a revenue from the duties imposed on the importation of tea into America, had in great measure been rendered abortive by our ceasing to import that commodity, a scheme was concerted by the ministry with the East India Company, and an act passed, enabling and encouraging them to transport and vend it in the colonies. Aware of the danger of giving success to this insidious manœuvre, and of permitting a precedent of taxation thus to be established among us, various methods were adopted to elude the stroke. The people of Boston, then ruled by a governor whom, as well as his predecessor, Sir Francis Bernard, all America considers as her enemy, were exceedingly embarrassed. The ships which had arrived with the tea were, by his management, prevented from returning. The duties would have been paid; the cargoes landed and exposed to sale; a governor's influence would have procured and protected many purchasers. While the town was suspended by deliberations on this important subject the tea was destroyed. Even supposing a trespass was thereby committed, and the proprietors of

the tea entitled to damages, the courts of law were open, and judges, appointed by the crown, presided in them. The East India Company, however, did not think proper to commence any suits, nor did they even demand satisfaction, either from individuals or from the community in general. The ministry, it seems, officiously made the case their own, and the great council of the nation descended to intermeddle with a dispute about private property. Divers papers, letters, and other unauthenticated *ex parte* evidence, were laid before them. Neither the persons who destroyed the tea, nor the people of Boston, were called upon to answer the complaint. The ministry, incensed by being disappointed in a favorite scheme, were determined to recur from the little arts of finesse to open force and unmanly violence. The port of Boston was blocked up by a fleet, and an army placed in the town. Their trade was to be suspended, and thousands reduced to the necessity of gaining subsistence from charity, till they should submit to pass under the yoke and consent to become slaves, by confessing the omnipotence of Parliament, and acquiescing in whatever disposition they might think proper to make of their lives and property.

Let justice and humanity cease to be the boast of your nation! Consult your history; examine your records of former transactions; nay, turn to the annals of the many arbitrary states and kingdoms that surround you, and show us a single instance of men being condemned to suffer for imputed crimes, unheard, unquestioned, and without even the specious formality of a trial; and that, too, by laws made expressly for the purpose, and which had no existence at the time of the fact committed. If it be difficult to reconcile these proceedings to the genius and temper of your laws and constitution, the task will become more arduous when we call upon our ministerial enemies to justify, not only condemning men untried and by hearsay, but involving the innocent in one common punishment with the guilty, and for the act of thirty or forty to bring poverty, distress, and calamity on thirty thousand souls, and those not your enemies, but your friends, brethren, and fellow-subjects.

It would be some consolation to us if the catalogue of American oppressions ended here. It gives us pain to be reduced to the necessity of reminding you, that under the confidence reposed in the faith of government, pledged in a royal charter from a British sovereign, the forefathers of the present inhabitants of the Massachusetts Bay left their former habitations, and established that great, flourishing, and loyal colony. Without incurring or being charged with a forfeiture of their rights, without being heard, without being tried, without law and without justice, by an act of Parliament their charter is destroyed, their liberties violated, their constitution and form of government changed; and all this upon no better pretence than because in one of their towns a trespass

was committed on some merchandise, said to belong to one of the companies, and because the ministry were of opinion that such high political regulations were necessary to compel due subordination and obedience to their mandates.

Nor are these the only capital grievances under which we labor. We might tell of dissolute, weak and wicked governors having been set over us; of legislatures being suspended for asserting the rights of British subjects; of needy and ignorant dependents on great men advanced to the seats of justice, and to other places of trust and importance; of hard restrictions on commerce, and a great variety of lesser evils, the recollection of which is almost lost under the weight and pressure of greater and more poignant calamities.

Now mark the progression of the ministerial plan for enslaving us.

Well aware that such hardy attempts to take our property from us; to deprive us of that valuable right of trial by jury; to seize our persons, and carry us for trial to Great Britain; to blockade our ports; to destroy our charters and change our forms of government; would occasion, and had already occasioned, great discontent in the colonies, which might produce opposition to these measures, an act was passed to protect, indemnify, and screen from punishment, such as might be guilty even of murder, in endeavoring to carry their oppressive edicts into execution; and by another act, the dominion of Canada is to be so extended, modelled and governed, as that, by being disunited from us, detached from our interests, by civil as well as religious prejudices; that by their numbers daily swelling with Catholic emigrants from Europe, and by their devotion to an administration so friendly to their religion, they might become formidable to us, and on occasion be fit instruments, in the hands of power, to reduce the ancient free Protestant colonies to the same state of slavery with themselves.

This was evidently the object of the act; and in this view, being extremely dangerous to our liberty and quiet, we cannot forbear complaining of it, as hostile to British America. Superadded to these considerations, we cannot help deploring the unhappy condition to which it has reduced the many English settlers who, encouraged by the royal proclamation, promising the enjoyment of all their rights, have purchased estates in that country. They are now the subjects of an arbitrary government, deprived of trial by jury, and when imprisoned, cannot claim the benefit of the *habeas corpus* act—that great bulwark and palladium of English liberty. Nor can we suppress our astonishment, that a British Parliament should ever consent to establish in that country, a religion that has deluged your island in blood, and dispersed impiety, bigotry, persecution, murder and rebellion through every part of the world.

This being a true state of facts, let us beseech you to consider to what end they may lead.

Admit that the ministry, by the powers of Britain and the aid of our Roman Catholic neighbors, should be able to carry the point of taxation, and reduce us to a state of perfect humiliation and slavery: such an enterprise would doubtless make some addition to your national debt, which already presses down your liberties, and fills you with pensioners and placemen. We presume, also, that your commerce will somewhat be diminished. However, suppose you should prove victorious, in what condition will you then be? What advantages or laurels will you reap from such a conquest?

May not a ministry, with the same armies enslave you? It may be said, you will cease to pay them—but remember the taxes from America, the wealth, and we may add the men, and particularly the Roman Catholics of this vast continent, will then be in the power of your enemies; nor will you have any reason to expect that after making slaves of us, many among us should refuse to assist in reducing you to the same abject state.

Do not treat this as chimerical. Know that in less than half a century, the quit rents reserved to the Crown, from the numberless grants of this vast continent, will pour large streams of wealth into the royal coffers, and if to this be added the power of taxing America at pleasure, the Crown will be rendered independent of you for supplies, and will possess more treasure than may be necessary to purchase the remains of liberty in your island. In a word, take care that you do not fall into the pit that is preparing for us.

We believe there is yet much virtue, much justice, and much public spirit in the English nation. To that justice we now appeal. You have been told that we are seditious, impatient of government, and desirous of independency. Be assured that these are not facts, but calumnies. Permit us to be as free as yourselves, and we shall ever esteem a union with you, to be our greatest glory, and our greatest happiness; we shall ever be ready to contribute all in our power to the welfare of the empire; we

shall consider your enemies as our enemies, and your interest as our own.

But, if you are determined that your ministers shall wantonly sport with the rights of mankind—if neither the voice of justice, the dictates of the law, the principles of the Constitution, or the suggestions of humanity, can restrain your hands from shedding human blood, in such an impious cause, we must then tell you, that we will never submit to be hewers of wood or drawers of water, for any ministry, or nation in the world.

Place us in the same situation that we were in, at the close of the last war, and our former harmony will be restored.

But lest the same supineness, and the same inattention to our common interest, which you have for several years shown, should continue, we think it prudent to anticipate the consequences.

By the destruction of the trade of Boston, the ministry have endeavored to induce submission to their measures. The like fate may befall us all. We will endeavor, therefore, to live without trade, and recur for subsistence to the fertility and bounty of our native soil, which will afford us all the necessities, and some of the conveniences of life. We have suspended our importation from Great Britain and Ireland; and, in less than a year's time, unless our grievances should be redressed, shall discontinue our exports to those kingdoms, and the West Indies.

It is with the utmost regret, however, that we find ourselves compelled, by the overruling principles of self-preservation, to adopt measures detrimental in their consequences, to numbers of our fellow-subjects in Great Britain and Ireland. But, we hope, that the magnanimity and justice of the British nation will furnish a Parliament of such wisdom, independence, and public spirit, as may save the violated rights of the whole empire, from the devices of wicked ministers and evil counselors, whether in or out of office; and thereby restore that harmony, friendship, and fraternal affection between all the inhabitants of his Majesty's kingdoms and territories, so ardently wished for by every true and honest American.



## EDMUND RANDOLPH.

THOMAS RANDOLPH, the poet and cotemporary of Ben Jonson, and who, before "death put a stop to his rising genius and fame," had gained a sterling reputation among the wits of his age, was the great-uncle of Sir John, the grandfather of Edmund Randolph. The family were *high Loialists*, in the civil wars, and being entirely broken and dispersed, Sir John's father\* determined, as many other *Cavaliers* did, to try his fortune in the Western world. From his earliest childhood, Sir John evinced a great propensity to letters; to improve which he was first put under the care of a Protestant clergyman, who came over among the French Refugees. But afterwards he received a more complete education at William and Mary College, in Virginia. He finished his studies in the law, in Gray's Inn and the Temple; and having put on his Barrister's gown, returned to his native country, where, from his first appearance at the bar, he was ranked among the practitioners of the first figure and distinction. At the time of the disputes in New York relative to the establishment of a new Court of Exchequer, Sir John expressed his sentiments upon the subject, which were clear and forcible, and now form a part of the judicial history of that State.† In the autumn of 1731, he went to England and "presented to his Majesty a state of the colony of Virginia, drawn up with great accuracy, which his Majesty was pleased to receive very graciously, and to confer the honor of knighthood on the said gentleman."‡ After his return to Virginia, he was elected Speaker of the House of Burgesses, and on the twenty-eighth of August, 1734, delivered his inaugural before that body. "If I shall endeavor," he said, "to make the established rules of our proceedings subservient to my own fancies and humors, or interests; or shall bring into this chair a restlessness and impatience about points that may be carried against my sentiments, or shall pretend to any authority of swaying any member in his opinion; I say, then I shall deserve to have no influence upon your proceedings, but do not doubt, nay, I hope, you will mortify me with the utmost of your contempt for the inconsistency of my theory and practice. And if I shall happen to succeed better, I will pretend to no other praise but that of not having deceived the expectations of so many worthy gentlemen who have continued to heap upon me such a series of favors, which, so long as I retain the memory of any thing, I must look upon as the chief foundation of the credit and reputation of my life."§

In March, 1737, Sir John Randolph died at the age of forty-four years, and was interred in the chapel of William and Mary College. According with his directions, he was borne to the place of interment "by six honest, industrious, poor housekeepers of Bruton parish, who were

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\* This was William Randolph, of Turkey Island, in Virginia. Little is known of him. Tradition says that he came over from Yorkshire poor, and made his living by building barns, and by his industry acquired large possessions of land.

† Sir John's letter on this subject, is published in the appendix of Smith's History of New York. Ed. 1830. Vol. 1, page 374. New York Historical Society's Collections.

‡ Bradford's American Weekly Mercury, Jan. 30th—Feb. 6th, 1732-3. The editor of this paper, after noticing these facts, concludes: "The public is impatient to see the contents of those papers, which are said to be designed for public good."

§ A full report of this speech is published in the American Weekly Mercury, Sept. 19-26, 1734.

to have twenty pounds divided among them, and attended by a numerous assembly of gentlemen and others, who paid the last honors to him with great solemnity, decency and respect.”\*

Edmund Randolph was born on the tenth of August, 1753. His father early adhered to the cause of Great Britain, joined the fortunes of Lord Dunmore, and finally disinherited his son for refusing to follow in the same course.† Of the youth and early education of Edmund Randolph we have no particulars. At the age of twenty-two years, in August, 1775, he joined the American army at Cambridge, and was taken into the military family of General Washington as an aid-de-camp. He remained here but a short time, being recalled to Virginia in the following November, by the death of his uncle, Peyton Randolph. In 1776 he was delegated to the Virginia Convention as the alternate of George Wythe, and before the termination of the year was elected Mayor of Williamsburg, the city he represented in the Convention. Subsequently he was appointed Attorney-General of the State of Virginia, under the new constitution, and at a future session of the House of Delegates he was elected its clerk.

In the practice of his profession, which was the law, his success was eminent and extraordinary. Clients filled his office, and beset him on his way from the office to the court-house, “with their papers in one hand and their guineas in the other.”‡ He was a member of the Continental Congress from 1779 until 1782, and in 1786 was elected Governor of Virginia, succeeding in that office Patrick Henry. The same year he was chosen a delegate to the Annapolis Convention, and subsequently to the Convention which met at Philadelphia in 1787, to revise the articles of confederation. His career in that assembly was marked and effective.§ He afterward was a member of the Virginia Convention, summoned to ratify the Federal Constitution. President Washington appointed him the first Attorney-General under the federal system, and in 1795 he was elevated to the office of Secretary of State, as successor of Mr. Jefferson. He remained in this position but a short time, resuming the practice of the law at Richmond in the autumn of the following year. At the celebrated trial of Aaron Burr, on the charge of treason, in May, 1807, Mr. Randolph was associated with Luther Martin and other distinguished lawyers, in the defence of that unfortunate man.

He died on the twelfth of September, 1813, in Frederic (now Page) county, Virginia, in the sixtieth year of his age, leaving an extremely valuable manuscript history of Virginia, in which he occupies a prominent position. This never appeared in print, and finally was destroyed.||

\* Obituary notice of Sir John Randolph, published in the *Virginia Gazette*, of March 11th, 1787, and reproduced in the *Virginia Historical Register*, Vol. 4, page 188.

† John Randolph, the father of Edmund, was attorney-general of Virginia, under the royal government. He was a brother of Peyton Randolph, president of the Continental Congress.

‡ Virginia Convention of 1776, by Hugh Blair Grigsby, page 76, et seq.

§ As chief magistrate of Virginia, it became the duty of Mr. Randolph to secure the attendance of Washington upon the Federal Convention. This matter he managed with great tact and delicacy; and, by the aid of other friends, he succeeded in overcoming the scruples of the illustrious patriot, then reposing in the retirement of Mount Vernon. Governor Randolph's conduct with regard to the constitution might seem to be marked by inconsistency, if we were not able to explain it by the motive of disinterested patriotism from which he evidently acted. He brought to the convention the most serious apprehensions for the fate of the Union. But he thought that the dangers with which it was surrounded might be averted, by correcting and enlarging the Articles of Confederation. When, at length, the government, which was actually framed, was found to be a system containing far greater restraints upon the powers of the States than he believed to be either expedient or safe, he endeavored to procure a vote authorizing amendments to be submitted by the State conventions, and to be finally decided on by another general convention. This proposition was rejected, and he declined to sign the constitution desiring to be free to oppose or advocate its adoption, when it should come before his own State, as his judgment might dictate.—*Curtis's History of the Constitution*, Vol. 1, page 481: *Madison Papers*.

|| While Mr. Wirt was preparing his eloquent Life of Patrick Henry, he saw and consulted this manuscript. Some years after, it was destroyed by a fire at New Orleans, while in the possession of a grandson of Edmund Randolph.—*Preface of Wirt's Patrick Henry*, page 11. *Grigsby's Virginia Convention of 1776*, page 78.

## THE FEDERAL CONSTITUTION.

Mr. Randolph delivered the following speech in the Convention of Virginia, on the sixth of June, 1788—the first and second sections of the first article of the Constitution being under consideration.\*

MR. CHAIRMAN: I am a child of the Revolution. My country, very early indeed, took me under her protection at a time when I most wanted it; and by a succession of favors and honors, prevented even my most ardent wishes. I feel the highest gratitude and attachment to my country; her felicity is the most fervent prayer of my heart. Conscious of having exerted my faculties to the utmost in her behalf, if I have not succeeded in securing the esteem of my countrymen, I shall reap abundant consolation from the rectitude of my intentions: honors, when compared to the satisfaction accruing from a conscious independence and rectitude of conduct, are no equivalent. The unwearied study of my life, shall be to promote her happiness. As a citizen, ambition and popularity are no objects with me. I expect, in the course of a year, to retire to that private station which I most sincerely and cordially prefer to all others.† The security of public justice, sir, is what I most fervently wish—as I consider that object to be the primary step to the attainment of public happiness. I can declare to the whole world, that in the part I take in this very important question, I am actuated by a regard for what I conceive to be our true interest. I can also, with equal sincerity, declare that I would join heart and hand in rejecting this system, did I conceive it would promote our happiness: but having a strong conviction on my mind, at this time, that, by a disunion, we shall throw away all those blessings we have so earnestly fought for, and that a rejection of the constitution will operate disunion—pardon me if I discharge the obligation I owe to my country by voting for its adoption. We are told that the report of dangers is false. The cry of peace, sir, is false: say peace, when there is peace: it is but a sudden calm. The tempest growls over you—look around—where-soever you look, you see danger. When there are so many witnesses, in many parts of America, that justice is suffocated, shall peace and happiness still be said to reign? Candor, sir, requires an undisguised representation of our situation. Candor, sir, demands a faithful exposition of facts. Many citizens have found justice strangled and trampled under foot, through the course of jurisprudence in this country. Are those who have debts due them, satisfied with your government? Are not cred-

itors wearied with the tedious procrastination of your legal process—a process obscured by legislative mists? Cast your eyes to your seaports, see how commerce languishes: this country, so blessed by nature with every advantage that can render commerce profitable, through defective legislation, is deprived of all the benefits and emoluments she might otherwise reap from it. We hear many complaints on the subject of located lands—a variety of competitors claiming the same lands under legislative acts—public faith prostrated, and private confidence destroyed. I ask you if your laws are revered? In every well regulated community, the laws command respect. Are yours entitled to reverence? We not only see violations of the constitution, but of national principles in repeated instances. How is the fact? The history of the violations of the constitution extends from the year 1776, to this present time—violations made by formal acts of the legislature; every thing has been drawn within the legislative vortex. There is one example of this violation in Virginia, of a most striking and shocking nature; an example so horrid, that if I conceived my country would passively permit a repetition of it, dear as it is to me, I would seek means of expatriating myself from it. A man, who was then a citizen, was deprived of his life, thus: from a mere reliance on general reports, a gentleman in the House of Delegates informed the House, that a certain man (Josiah Phillips) had committed several crimes, and was running at large, perpetrating other crimes; he therefore moved for leave to attaint him. He obtained that leave instantly. No sooner did he obtain it, than he drew from his pocket a bill already written for that effect; it was read three times in one day, and carried to the Senate: I will not say that it passed the same day through the Senate; but he was attainted very speedily and precipitately, without any proof better than vague reports! Without being confronted with his accusers and witnesses; without the privilege of calling for evidence in his behalf, he was sentenced to death, and was afterwards actually executed.\* Was this arbitrary deprivation of life, the dearest gift of God to man, consistent with the genius of a republican government? Is this compatible with the spirit of freedom? This, sir, has made the deepest impression on my heart, and I cannot contemplate it without horror.

There are still a multiplicity of complaints of the debility of the laws. Justice, in many instances, is so unattainable, that commerce may, in fact, be said to be stopped entirely. There is no peace, sir, in this land: can peace

\* Ante, pp. 13-164.

† Mr. Randolph was at this time Governor of Virginia.

\* Mr. Wirt has satisfactorily shown that this statement is founded in error. Life of Patrick Henry, page 291, et seq.

exist with injustice, licentiousness, insecurity and oppression? These considerations, independent of many others which I have not yet enumerated, would be a sufficient reason for the adoption of this constitution, because it secures the liberty of the citizen, his person and property, and will invigorate and restore commerce and industry.

An additional reason to induce us to adopt it is that excessive licentiousness which has resulted from the relaxation of our laws, and which will be checked by this government. Let us judge from the fate of more ancient nations. Licentiousness has produced tyranny among many of them. It has contributed as much (if not more) as any other cause whatsoever, to the loss of their liberties. I have respect for the integrity of our legislators; I believe them to be virtuous: but as long as the defects of the constitution exist, so long will laws be imperfect. The honorable gentleman went on further, and said that the accession of eight States is not a reason for our adoption. Many other things have been alleged out of order; instead of discussing the system regularly, a variety of points are promiscuously debated, in order to make temporary impressions on the members. Sir, were I convinced of the validity of their arguments, I would join them heart and hand. Were I convinced that the accession of eight States did not render our accession also necessary to preserve the Union, I would not accede to it till it should be previously amended; but, sir, I am convinced that the Union will be lost by our rejection. Massachusetts has adopted it; she has recommended subsequent amendments; her influence must be very considerable to obtain them: I trust my countrymen have sufficient wisdom and virtue to entitle them to equal respect.

Is it urged, that being wiser, we ought to prescribe amendments to the other States? I have considered this subject deliberately; wearied myself in endeavoring to find a possibility of preserving the Union, without our unconditional ratification; but, sir, in vain; I find no other means. I ask myself a variety of questions applicable to the adopting States, and I conclude, will they repent of what they have done? Will they acknowledge themselves in an error? Or will they recede to gratify Virginia? My prediction is, that they will not. Shall we stand by ourselves, and be severed from the Union if amendments cannot be had? I have every reason for determining within myself that our rejection must dissolve the Union, and that that dissolution will destroy our political happiness. The honorable gentleman was pleased to draw out several other arguments, out of order: that this government would destroy the State governments, the trial by jury, &c., &c., and concluded, by an illustration of his opinion, by a reference to the confederacy of the Swiss. Let us argue with unprejudiced minds. He says that the trial by jury is gone; is this so? Although I have de-

clared my determination to give my vote for it, yet I shall freely censure those parts which appear to me reprehensible. The trial by jury, in criminal cases, is secured; in civil cases it is not so expressly secured as I could wish it; but it does not follow that Congress has the power of taking away this privilege, which is secured by the constitution of each State, and not given away by this constitution. I have no fear on this subject; Congress must regulate it so as to suit every State. I will risk my property on the certainty that they will institute the trial by jury in such manner as shall accommodate the conveniences of the inhabitants in every State; the difficulty of ascertaining this accommodation was the principal cause of its not being provided for. It will be the interest of the individuals composing Congress to put it on this convenient footing. Shall we not choose men respectable for their good qualities? Or can we suppose that men, tainted with the worst vices, will get into Congress? I beg leave to differ from the honorable gentleman, in another point. He dreads that great inconveniences will ensue from the federal court; that our citizens will be harassed by being carried thither. I cannot think that this power of the federal judiciary will necessarily be abused. The inconvenience here suggested being of a general nature, affecting most of the States, will, by general consent of the States, be removed; and, I trust, such regulations shall be made, in this case, as will accommodate the people in every State. The honorable gentleman instanced the Swiss cantons as an example, to show us the possibility, if not expediency, of being in amicable alliance with the other States, without adopting this system. Sir, references to history will be fatal in political reasoning, unless well guarded. Our mental ability is often so contracted, and powers of investigation so limited, that sometimes we adduce as an example in our favor what in fact militates against us. Examine the situation of that country comparatively to us. Its extent and situation are totally different from ours; it is surrounded by powerful, ambitious, and reciprocally jealous nations; its territory small, and the soil not very fertile. The peculiarity, sir, of their situation, has kept these cantons together, and not that system of alliance to which the gentleman seems to attribute the durability and felicity of their connection.

[Here Mr. Randolph quoted some passages from Stanyard, illustrating his argument, and largely commented upon them; the effect of which was, that the narrow confines of that country rendered it very possible for a system of confederacy to accommodate those cantons, that would not suit the United States; that it was the fear of the ambitious and warlike nations that surrounded them, and the reciprocal jealousy of the other European powers, that rendered their union so durable; and that notwithstanding these circumstances, and their being a hardy race of people, yet such was the

injudicious construction of their confederacy, that very considerable broils sometimes interrupted their harmony.]

He then continued—I have produced this example to show that we ought not to be amused with historical references which have no kind of analogy to the points under our consideration. We ought to confine ourselves to those points solely which have an immediate and strict similitude to the subject of our discussion. The reference made by the honorable gentleman over the way is extremely inapplicable to us. Are the Swiss cantons circumstanced as we are? Are we surrounded by formidable nations, or are we situated in any manner like them? We are not, sir. Then it naturally results that no such friendly intercourse as he flattered himself with could take place, in case of a dissolution of our Union. We are remotely situated from powerful nations, the dread of whose attack might impel us to unite firmly with one another; we are not situated in an inaccessible, strong position; we have to fear much from one another; we must soon feel the fatal effects of an imperfect system of union.

The honorable gentleman attacks the constitution, as he thinks it contrary to our bill of rights. Do we not appeal to the people, by whose authority all government is made? That bill of rights is of no validity, because, I conceive, it is not formed on due authority. It is not a part of our constitution; it has never secured us against any danger; it has been repeatedly disregarded and violated. But we must not discard the confederation, for the remembrance of its past services. I am attached to old servants. I have regard and tenderness for this old servant; but when reason tells us that it can no longer be retained without throwing away all that it has gained us, and running the risk of losing every thing dear to us, must we still continue our attachment? Reason and my duty tell me not. Other gentlemen may think otherwise. But, sir, is it not possible that men may differ in sentiments, and still be honest? We have an inquisition within ourselves that leads us not to offend so much against charity. The gentleman expresses a necessity of being suspicious of those who govern. I will agree with him in the necessity of political jealousy to a certain extent; but we ought to examine how far this political jealousy ought to be carried. I confess that a certain degree of it is highly necessary to the preservation of liberty; but it ought not to be extended to a degree which is degrading and humiliating to human nature; to a degree of restlessness and active disquietude sufficient to disturb a community or preclude the possibility of political happiness and contentment. Confidence ought also to be equally limited. Wisdom shrinks from extremes, and fixes on a medium as her choice. Experience and history, the least fallible judges, teach us that in forming a government, the powers to be given must

be commensurate to the object. A less degree will defeat the intention, and a greater will subject the people to the depravity of rulers, who, though they are but the agents of the people, pervert their powers to their own emolument and ambitious views.

Mr. Chairman, I am sorry to be obliged to detain the House, but the relation of a variety of matters renders it now unavoidable. I informed the House yesterday, before rising, that I intended to show the necessity of having a national government, in preference to the confederation; also, to show the necessity of conceding the power of taxation, and of distinguishing between its objects; and I am the more happy, that I possess materials of information for that purpose. My intention then is, to satisfy the gentlemen of this committee, that a national government is absolutely indispensable, and that a confederacy is not eligible, in our present situation. The introductory step to this will be, to endeavor to convince the House of the necessity of the Union, and that the present confederation is actually inadequate and unamendable. The extent of the country is objected to, by the gentleman over the way, as an insurmountable obstacle to the establishing a national government in the United States. It is a very strange and inconsistent doctrine, to admit the necessity of the Union, and yet urge this last objection, which I think goes radically to the existence of the Union itself. If the extent of the country be a conclusive argument against a national government, it is equally so against an union with the other States. Instead of entering largely into a discussion of the nature and effect of the different kinds of government, or into an inquiry into the particular extent of country, that may suit the genius of this or that government, I ask this question—is this government necessary for the safety of Virginia? Is the Union indispensable for our happiness? I confess it is imprudent for any nation to form alliance with another, whose situation and construction of government are dissimilar with its own. It is impolitic and improper for men of opulence to join their interest with men of indigence and chance. But we are now inquiring, particularly, whether Virginia, as contradistinguished from the other States, can exist without the Union—a hard question, perhaps, after what has been said. I will venture, however, to say, she cannot. I shall not rest contented with asserting, I shall endeavor to prove. Look at the most powerful nations on earth. England and France have had recourse to this expedient. Those countries found it necessary to unite with their immediate neighbors, and this union has prevented the most lamentable mischiefs. What divine pre-eminence is Virginia possessed of, above other States? Can Virginia send her navy and thunder, to bid defiance to foreign nations? And can she exist without an union with her neighbors, when the most potent nations have found such an union necessary, not only to

their political felicity, but their national existence? Let us examine her ability. Although it be impossible to determine, with accuracy, what degree of internal strength a nation ought to possess, to enable it to stand by itself; yet there are certain sure facts and circumstances, which demonstrate that a particular nation cannot stand singly. I have spoken with freedom, and, I trust, I have done it with decency; but I must also speak with truth. If Virginia can exist without the Union, she must derive that ability from one or other of these sources, viz.: from her natural situation, or because she has no reason to fear from other nations. What is her situation? She is not inaccessible. She is not a petty republic, like that of St. Marino, surrounded with rocks and mountains, with a soil not very fertile, nor worthy the envy of surrounding nations. Were this, sir, her situation, she might, like that petty state, subsist, separated from all the world. On the contrary, she is very accessible: the large, capacious bay of Chesapeake, which is but too excellently adapted for the admission of enemies, renders her very vulnerable. I am informed, and I believe rightly, because I derive my information from those whose knowledge is most respectable, that Virginia is in a very unhappy position, with respect to the access of foes by sea, though happily situated for commerce. This being her situation by sea, let us look at land. She has frontiers adjoining the States of Pennsylvania, Maryland and North Carolina. Two of those States have declared themselves members of the Union. Will she be inaccessible to the inhabitants of those States? Cast your eyes to the western country, that is inhabited by cruel savages, your natural enemies. Besides their natural propensity to barbarity, they may be excited, by the gold of foreign enemies, to commit the most horrid ravages on your people. Our great, increasing population, is one remedy to this evil; but, being scattered thinly over so extensive a country, how difficult it is to collect their strength, or defend the country. This is one point of weakness. I wish, for the honor of my countrymen, that it was the only one. There is another circumstance which renders us more vulnerable. Are we not weakened by the population of those whom we hold in slavery? The day may come, when they may make an impression upon us. Gentlemen who have been long accustomed to the contemplation of the subject, think there is a cause of alarm in this case. The number of those people, compared to that of the whites, is in an immense proportion: their number amounts to two hundred and thirty-six thousand, that of the whites only to three hundred and fifty-two thousand. Will the American spirit, so much spoken of, repel an invading enemy, or enable you to obtain an advantageous peace? Manufactures and military stores may afford relief to a country exposed: have we these at present? Attempts have been made to have these here. If we shall be separated

from the Union, shall our chance of having these be greater? Or, will not the want of these be more deplorable? We shall be told of the exertions of Virginia, under the confederation—her achievements, when she had no commerce. These, sir, were necessary for her immediate safety; nor would these have availed, without the aid of the other States. Those States, then our friends, brothers and supporters, will, if disunited from us, be our bitterest enemies.

If then, sir, Virginia, from her situation, is not inaccessible, or invulnerable, let us consider if she be protected, by having no cause to fear from other nations: has she no cause to fear? You will have cause to fear, as a nation, if disunited; you will not only have this cause to fear from yourselves, from that species of population I have before mentioned, and your once sister States, but from the arms of other nations. Have you no cause of fear from Spain, whose dominions border on your country? Every nation, every people, in our circumstances, have always had abundant cause to fear. Let us see the danger to be apprehended from France: let us suppose Virginia separated from the other States: as part of the former confederated States, she will owe France a very considerable sum—France will be as magnanimous as ever. France, by the law of nations, will have a right to demand the whole of her, or of the others. If France were to demand it, what would become of the property of America? Could she not destroy what little commerce we have? Could she not seize our ships, and carry havoc and destruction before her on our shores? The most lamentable desolation would take place. We owe a debt to Spain also; do we expect indulgence from that quarter? That nation has a right to demand the debt due to it, and power to enforce that right. Will the Dutch be silent about the debt due to them? Is there any one pretension, that any of these nations will be patient? The debts due the British are also very considerable: these debts have been withheld contrary to treaty: if Great Britain will demand the payment of these debts peremptorily, what will be the consequence? Can we pay them if demanded? Will no danger result from a refusal? Will the British nation suffer their subjects to be stripped of their property? Is not that nation amply able to do its subjects justice? Will the resentment of that powerful and supercilious nation sleep for ever? If we become one, sole nation, uniting with our sister States, our means of defence will be greater; the indulgence for the payment of those debts will be greater, and the danger of an attack less probable. Moreover, vast quantities of lands have been sold, by citizens of this country, to Europeans, and these lands cannot be found. Will this fraud be countenanced or endured? Among so many causes of danger, shall we be secure, separated from our sister States? Weakness itself, sir, will invite some attack upon you

country. Contemplate our situation deliberately, and consult history: it will inform you, that people in our circumstances have ever been attacked, and successfully: open any page, and you will there find our danger truly depicted. If such a people had any thing, was it not taken? The fate which will befall us, I fear, sir, will be, that we shall be made a partition of. How will these, our troubles, be removed? Can we have any dependence on commerce? Can we make any computation on this subject? Where will our flag appear? So high is the spirit of commercial nations, that they will spend five times the value of the object, to exclude their rivals from a participation in commercial profits: they seldom regard any expenses. If we should be divided from the rest of the States, upon what footing would our navigation in the Mississippi be? What would be the probable conduct of France and Spain? Every gentleman may imagine, in his own mind, the natural consequences. To these considerations, I might add many others of a similar nature. Were I to say, that the boundary between us and North Carolina is not yet settled, I should be told that Virginia and that State go together. But what, sir, will be the consequence of the dispute that may arise between us and Maryland, on the subject of Potomac river? It is thought, Virginia has a right to an equal navigation with them in that river. If ever it should be decided on grounds of prior right, their charter will inevitably determine it in their favor. The country called the Northern Neck, will probably be severed from Virginia. There is not a doubt but the inhabitants of that part will annex themselves to Maryland, if Virginia refuse to accede to the Union. The recent example of those regulations lately made respecting that territory, will illustrate that probability. Virginia will also be in danger of a conflict with Pennsylvania, on the subject of boundaries. I know that some gentlemen are thoroughly persuaded, that we have a right to those disputed boundaries: if we have such a right, I know not where it is to be found.

Are we not borderers on States that will be separated from us? Call to mind the history of every part of the world, where nations have bordered on one another, and consider the consequences of our separation from the Union. Peruse those histories, and you find such countries to have ever been almost a perpetual scene of bloodshed and slaughter. The inhabitants of one escaping from punishment into the other, protection given them, consequent pursuit, robbery, cruelty, and murder. A numerous standing army, that dangerous expedient, would be necessary, but not sufficient for the defence of such borders. Every gentleman will amplify the scene in his own mind. If you wish to know the extent of such a scene, look at the history of England and Scotland before the union; you will see their borderers continually committing depredations and cruelties,

of the most calamitous and deplorable nature, on one another.

Mr. Chairman, were we struck off from the Union, and disputes of the back lands should be renewed, which are of the most alarming nature, and which must produce uncommon mischiefs, can you inform me how this great subject would be settled? Virginia has a large unsettled country; she has, at last, quieted it; but there are great doubts whether she has taken the best way to effect it. If she has not, disagreeable consequences may ensue. I have before hinted at some other causes of quarrel between the other States and us; particularly the hatred that would be generated by commercial competition. I will only add, on that subject, that controversies may arise concerning the fisheries, which must terminate in wars. Paper money may also be an additional source of disputes. Rhode Island has been in one continued train of opposition to national duties and integrity; they have defrauded their creditors by their paper money. Other States have also had emissions of paper money, to the ruin of credit and commerce. May not Virginia, at a future day, also recur to the same expedient? Has Virginia no affection for paper money, or disposition to violate contracts? I fear she is as fond of these measures as most other States in the Union. The inhabitants of the adjacent States would be affected by the depreciation of paper money, which would assuredly produce a dispute with those States. This danger is taken away by the present constitution, as it provides "That no State shall emit bills of credit." Maryland has counteracted the policy of this State frequently, and may be meditating examples of this kind again. Before the revolution there was a contest about those back lands, in which even government was a party; it was put an end to by the war. Pennsylvania was ready to enter into a war with us for the disputed lands near the boundaries, and nothing but the superior prudence of the man who was at the head of affairs in Virginia could have prevented it.

I beg leave to remind you of the strength of Massachusetts and other States to the north, and what would their conduct be to us if disunited from them? In case of a conflict between us and Maryland or Pennsylvania, they would be aided by the whole strength of the more northern States; in short, by that of all the adopting States. For these reasons, I conceive, that if Virginia supposes she has no cause of apprehension, she will find herself in a fatal error. Suppose the American spirit in the fullest vigor in Virginia; what military preparations and exertions is she capable of making? The other States have upwards of three hundred and thirty thousand men capable of bearing arms; this will be a good army, or they can very easily raise a good army out of so great a number. Our militia amounts to fifty thousand; even stretching it to the improbable amount (urged by some) of sixty thousand; in

case of an attack, what defence can we make? Who are militia? Can we depend solely upon these? I will pay the last tribute of gratitude to the militia of my country; they performed some of the most gallant feats during the last war, and acted as nobly as men inured to other avocations could be expected to do; but, sir, it is dangerous to look to them as our sole protectors. Did ever militia defend a country? Those of Pennsylvania were said to differ very little from regulars, yet these, sir, were insufficient for the defence of that State. The militia of our country will be wanted for agriculture; on this noblest of arts depends the virtue and the very existence of a country; if it be neglected, every thing else must be in a state of ruin and decay. It must be neglected if those hands which ought to attend to it are occasionally called forth on military expeditions. Some, also, will be necessary for manufactures, and those mechanic arts which are necessary for the aid of the farmer and planter. If we had men sufficient in number to defend ourselves, it could not avail without other requisites. We must have a navy, to be supported in time of peace as well as war, to guard our coasts and defend us against invasions. The impossibility of building and equipping a fleet, in a short time, constitutes the necessity of having a certain number of ships of war always ready in time of peace. The maintaining a navy will require money; and where, sir, can we get money for this and other purposes? How shall we raise it? Review the enormity of the debts due by this country; the amount of debt we owe to the continent for bills of credit, rating at forty for one, will amount to between six and seven hundred thousand pounds. There is also due the continent the balance of requisitions due by us, and, in addition to this proportion of the old continental debt, there are the foreign, domestic, State, military, and loan-office debts, to which, when you add the British debt, where is the possibility of finding money to raise an army or navy? Review then your real ability. Shall we recur to loans? Nothing can be more impolitic; they impoverish a nation; we, sir, have nothing to repay them; nor, sir, can we procure them. Our numbers are daily increasing by emigration; but this, sir, will not relieve us, when our credit is gone, and it is impossible to borrow money. If the imposts and duties in Virginia, even on the present footing, be very unproductive, and not equal to our necessities, what would they be if we were separated from the Union? From the first of September to the first of June, the amount put into the treasury is only fifty-nine thousand pounds, or a little more. But, sir, if smuggling be introduced in consequence of high duties, or otherwise, and the Potomac should be lost, what hope is there of getting money from these?

Shall we be asked if the impost would be bettered by the Union? I answer that it will, sir. Credit being restored and confidence dif-

fused in the country, merchants and men of wealth will be induced to come among us; emigration will increase, and commerce will flourish; the impost will therefore be more sure and productive. Under these circumstances, can you find men to defend you? If not men, where can you have a navy? It is an old observation, that he who commands at sea will command the land; and it is justified by modern experience in war. The sea can only be commanded by commercial nations. The United States have every means, by nature, to enable them to distribute supplies mutually among one another, to supply other nations with many articles, and to carry for other nations. Our commerce would not be kindly received by foreigners, if transacted solely by ourselves, as it is the spirit of commercial nations to engross, as much as possible, the carrying trade; this makes it necessary to defend our commerce; but how shall we encompass this end? England has arisen to the greatest height, in modern times, by her navigation act and other excellent regulations. The same means would produce the same effects. We have inland navigation. Our last exports did not exceed one million of pounds. Our export trade is entirely in the hands of foreigners. We have no manufactures; depend for supplies on other nations, and so far are we from having any carrying trade, that, as I have already said, our exports are in the hands of foreigners. Besides the profit that might be made by our natural materials, much greater gains would accrue from their being first wrought before they were exported. England has reaped immense profits by this; nay, even by purchasing and working up those materials which her country did not afford; her success in commerce is generally ascribed to her navigation act. Virginia would not, encumbered as she is, agree to have such an act. Thus, for the want of a navy, are we deprived of the multifarious advantages of our natural situation; nor is it possible, that if the Union is dissolved, we ever should have a navy sufficient either for our defence or the extension of our trade. I beg gentlemen to consider these two things—our inability to raise and man a navy, and the dreadful consequences of the dissolution of the Union.

I will close this catalogue of the evils of the dissolution of the Union, by recalling to your mind what passed in the year 1781. Such was the situation of our affairs then, that the powers of a dictator were given to the commander-in-chief to save us from destruction. This shows the situation of the country to have been such as made it ready to embrace an actual dictator. At some future period, will not our distresses impel us to do what the Dutch have done—throw all power into the hands of a stadtholder? How infinitely more wise and eligible, than this desperate alternative, is an union with our American brethren? I feel myself so abhorrent to any thing that will dis-



solve our Union, that I cannot prevail with myself to assent to it directly or indirectly. If the Union is to be dissolved, what step is to be taken? Shall we form a partial confederacy; or, is it expected that we shall successfully apply to foreign alliance for military aid? This last measure, sir, has ruined almost every nation that has used it; so dreadful an example ought to be most cautiously avoided; for seldom has a nation resorted to the expedient of foreign succor, without being ultimately crushed by that succor. We may lose our liberty and independence by this injudicious scheme of policy. Admitting it to be a scheme replete with safety, what nation shall we solicit—France? She will disdain a connection with a people in our predicament. I would trust every thing to the magnanimity of that nation, but she would despise a people who had, like us, so imprudently separated from their brethren; and, sir, were she to accede to our proposal, with what facility could she become mistress of our country. To what nation, then, shall we apply—to Great Britain? Nobody has as yet trusted that idea. An application to any other must be either fruitless or dangerous; to those who advocate local confederacies, and at the same time preach up for republican liberty, I answer, that their conduct is inconsistent; the defence of such partial confederacies will require such a degree of force and expense as will destroy every feature of republicanism. Give me leave to say, that I see naught but destruction in a local confederacy. With what State can we confederate but North Carolina—North Carolina, situated worse than ourselves? Consult your own reason: I beseech gentlemen most seriously to reflect on the consequences of such a confederacy; I beseech them to consider, whether Virginia and North Carolina, both oppressed with debts and slaves, can defend themselves externally, or make their people happy internally. North Carolina having no strength but militia, and Virginia in the same situation, will make, I fear, but a despicable figure in history. Thus, sir, I hope that I have satisfied you that we are unsafe without an union, and that in union alone safety consists.

I come now, sir, to the great inquiry, whether the confederation be such a government as we ought to continue under; whether it be such a government as can secure the felicity of any free people. Did I believe the confederation was a good thread, which might be broken without destroying its utility entirely, I might be induced to concur in putting it together; but I am so thoroughly convinced of its incapacity to be mended or spliced, that I would sooner recur to any other expedient.

When I spoke last, I endeavored to express my sentiments concerning that system, and to apologize (if an apology was necessary) for the conduct of its framers—that it was hastily devised, to enable us to repel a powerful enemy—that the subject was novel, and that its inef-

ficacy was not discovered, till requisitions came to be made by Congress. In the then situation of America, a speedy remedy was necessary to ward off the danger, and this sufficiently answered that purpose; but so universally is its inbecility now known, that it is almost useless for me to exhibit it at this time. Has not Virginia, as well as every other State, acknowledged its debility, by sending delegates to the general convention? The confederation is, of all things, the most unsafe, not only to trust to, in its present form, but even to amend. The object of a federal government is to remedy and strengthen the weakness of its individual branches; whether that weakness arises from situation, or any other external cause. With respect to the first, is it not a miracle that the confederation carried us through the last war? It was our unanimity, sir, that carried us through it. That system was not ultimately concluded till the year 1781—although the greatest exertions were made before that time. Then came requisitions of men and money; its defects then were immediately discovered; the quotas of men were readily sent—not so those of money. One State feigned inability, another would not comply till the rest did, and various excuses were offered; so that no money was sent into the treasury—not a requisition was fully complied with. Loans were the next measure fallen upon: upwards of eighty millions of dollars were wanting, besides the emissions of dollars, forty for one. These things show the impossibility of relying on requisitions. [Here Mr. Randolph enumerated the different delinquencies of different States, and the consequent distresses of Congress.] If the American spirit is to be depended upon, I call him to awake, to see how his Americans have been disgraced: but I have no hopes that things will be better hereafter. I fully expect things will be as they have been, and that the same derangements will produce similar miscarriages. Will the American spirit produce money or credit, unless we alter our system? Are we not in a contemptible situation—are we not the jest of other nations?

But it is insinuated, by the honorable gentleman, that we want to be a grand, splendid and magnificent people: we wish not to become so. The magnificence of a royal court is not our object. We want government, sir—a government that will have stability, and give us security; for our present government is destitute of the one, and incapable of producing the other. It cannot perhaps, with propriety, be denominated a government—being void of that energy requisite to enforce its sanctions. I wish my country not to be contemptible in the eyes of foreign nations. A well regulated community is always respected. It is the internal situation, the defects of government, that attract foreign contempt—that contempt, sir, is too often followed by subjugation. Advert to the contemptuous manner in which a shrewd politician speaks of our government. [Here Mr.

Randolph quoted a passage from Lord Sheffield, the purport of which was, that Great Britain might engross our trade on her own terms: that the imbecility and inefficacy of our general government were such, that it was impossible we could counteract her policy, however rigid or illiberal towards us her commercial regulations might be.] Reflect but a moment on our situation. Does it not invite real hostility? The conduct of the British ministry to us, is the natural effect of our unnerved government. Consider the commercial regulations between us and Maryland. Is it not known to gentlemen that this State and that have been making reprisals on each other, to obviate a repetition of which, in some degree, these regulations have been made? Can we not see from this circumstance, the jealousy, rivalry and hatred that would subsist between them, in case this State was out of the Union? They are importing States, and importing States will ever be competitors and rivals. Rhode Island and Connecticut have been on the point of war, on the subject of their paper money—Congress did not attempt to interpose. When Massachusetts was distressed by the late insurrection, Congress could not relieve her. Who headed that insurrection? Recollect the facility with which it was raised, and the very little ability of the ringleader, and you cannot but deplore the extreme debility of our merely nominal government; we are too despicable to be regarded by foreign nations. The defects of the confederation consisted principally in the want of power. It had nominally powers—powers on paper, which it could not use. The power of making peace and war is expressly delegated to Congress; yet the power of granting passports, though within that of making peace and war, was considered by Virginia as belonging to herself. Without adequate powers, vested in Congress, America cannot be respectable in the eyes of other nations. Congress, sir, ought to be fully vested with power to support the Union, protect the interest of the United States, maintain their commerce, and defend them from external invasions and insults, and internal insurrections; to maintain justice, and promote harmony and public tranquillity among the States. A government not vested with these powers, will ever be found unable to make us happy or respectable: how far the confederation is different from such a government, is known to all America. Instead of being able to cherish and protect the States, it has been unable to defend itself against the encroachments made upon it by the States: every one of them has conspired against it—Virginia as much as any. This fact could be proved by reference to actual history. I might quote the observations of an able modern author, (not because he is decorated with the name of author, but because his sentiments are drawn from human nature,) to prove the dangerous impolicy of withholding necessary powers from Congress; but I shall at this time fatigue

the House as little as possible. What are the powers of Congress? They have full authority to recommend what they please. This recommendatory power reduces them to the condition of poor supplicants. Consider the dignified language of the members of the American Congress—May it please your high mightinesses, of Virginia, to pay your just, proportionate quota of our national debt: we humbly supplicate that it may please you to comply with your federal duties! We implore, we beg your obedience! Is not this, sir, a fair representation of the powers of Congress? Their operations are of no validity, when counteracted by the States. Their authority to recommend is a mere mockery of government.

But the amendability of the confederation seems to have great weight on the minds of some gentlemen. To what point will the amendments go? What part makes the most important figure? What part deserves to be retained? In it, one body has the legislative, executive and judicial powers: but the want of efficient powers has prevented the dangers naturally consequent on the union of these. Is this union consistent with an augmentation of their power? Will you then amend it, by taking away one of these three powers? Suppose, for instance, you only vested it with the legislative and executive powers, without any control on the judiciary, what must be the result? Are we not taught by reason, experience and governmental history, that tyranny is the natural and certain consequence of uniting these two powers, or the legislative and judicial powers, exclusively, in the same body? If any one denies it, I shall pass by him, as an infidel not to be reclaimed. Wherever any two of these three powers are vested in one single body, they must, at one time or other, terminate in the destruction of liberty. In the most important cases, the assent of nine States is necessary to pass a law: this is too great a restriction, and whatever good consequences it may in some cases produce, yet it will prevent energy in many other cases; it will prevent energy, which is most necessary on some emergencies, even in cases wherein the existence of the community depends on vigor and expedition. It is incompatible with that secrecy which is the life of execution and dispatch. Did ever thirty or forty men retain a secret? Without secrecy, no government can carry on its operations, on great occasions: this is what gives that superiority in action to the government of one. If anything were wanting to complete this farce, it would be, that a resolution of the assembly of Virginia, and the other legislatures, should be necessary to confirm and render of any validity, the congressional acts: this would openly discover the debility of the general government to all the world. But, in fact, its imbecility is now nearly the same as if such acts were formally requisite. An act of the assembly of Virginia, controverting a resolution of Congress, would certainly prevail. I therefore

conclude, that the confederation is too defective to deserve correction. Let us take farewell of it, with reverential respect, as an old benefactor. It is gone, whether this House says so, or not. It is gone, sir, by its own weakness.

I am afraid I have tired the patience of this House; but I trust you will pardon me, as I was urged by the importunity of the gentleman, in calling for the reasons of laying the groundwork of this plan. It is objected by the honorable gentleman over the way, (Mr. George Mason,) that a republican government is impracticable in an extensive territory, and the extent of the United States is urged as a reason for the rejection of this constitution. Let us consider the definition of a republican government, as laid down by a man who is highly esteemed. Montesquieu, so celebrated among politicians, says, "that a republican government is that, in which the body, or only a part of the people, is possessed of the supreme power; a monarchical, that in which a single person governs, by fixed and established laws; a despotic government, that in which a single person, without law and without rule, directs every thing, by his own will and caprice. This author has not distinguished a republican government from a monarchy, by the extent of its boundaries, but by the nature of its principles. He, in another place, contradistinguishes it, as a government of laws, in opposition to others, which he denominates a government of men. The empire, or government of laws, according to that phrase, is that in which the laws are made with the free will of the people; hence then, if laws be made by the assent of the people, the government may be deemed free. When laws are made with integrity, and executed with wisdom, the question is, whether a great extent of country will tend to abridge the liberty of the people. If defensive force be necessary, in proportion to the extent of country, I conceive that, in a judiciously constructed government, be the country ever so extensive, its inhabitants will be proportionably numerous, and able to defend it. Extent of country, in my conception, ought to be no bar to the adoption of a good government. No extent on earth seems to me too great, provided the laws be wisely made and executed. The principles of representation and responsibility may pervade a large, as well as a small territory: and tyranny is as easily introduced into a small, as into a large district. If it be answered, that some of the most illustrious and distinguished authors are of a contrary opinion, I reply, that

authority has no weight with me, till I am convinced—that not the dignity of names, but the force of reasoning, gains my assent.

I intended to have shown the nature of the powers which ought to have been given to the general government, and the reason of investing it with the power of taxation; but this would require more time than my strength, or the patience of the committee, would now admit of. I shall conclude with a few observations, which come from my heart. I have labored for the continuance of the Union—the rock of our salvation. I believe that, as sure as there is a God in Heaven, our safety, our political happiness and existence, depend on the union of the States; and, that without this union, the people of this and the other States will undergo the unspeakable calamities which discord, faction, turbulence, war and bloodshed, have produced in other countries. The American spirit ought to be mixed with American pride—pride to see the Union magnificently triumph. Let that glorious pride, which once defied the British thunder, reanimate you again. Let it not be recorded of Americans, that, after having performed the most gallant exploits, after having overcome the most astonishing difficulties, and after having gained the admiration of the world by their incomparable valor and policy, they lost their acquired reputation, their national consequence and happiness, by their own indiscretion. Let no future historian inform posterity, that they wanted wisdom and virtue to concur in any regular, efficient government. Should any writer, doomed to so disagreeable a task, feel the indignation of an honest historian, he would reprehend and re-criminate our folly, with equal severity and justice. Catch the present moment, seize it with avidity and eagerness, for it may be lost, never to be regained. If the Union be now lost, I fear it will remain so for ever. I believe gentlemen are sincere in their opposition, and actuated by pure motives; but when I maturely weigh the advantages of the Union, and dreadful consequences of its dissolution; when I see safety on my right, and destruction on my left; when I behold respectability and happiness acquired by the one, but annihilated by the other, I cannot hesitate to decide in favor of the former. I hope my weakness, from speaking so long, will apologize for my leaving this subject in so mutilated a condition. If a further explanation be desired, I shall take the liberty to enter into it more fully another time.

## SPEECH IN THE TRIAL OF AARON BURR.

In May, 1807, Aaron Burr was arraigned in the Circuit Court of the United States, held at Richmond, Virginia, for treason, in preparing the means of a military expedition against the possessions of the King of Spain, with whom the United States were at peace.\* Mr. Randolph, associated with Mr. Luther Martin and other distinguished lawyers, appeared in the defence of Mr. Burr, and spoke as follows:

The little fragment of time that is left for me, may it please your Honors, I shall not abuse. The day before yesterday I informed the court that I had reserved to myself the right of fully answering the arguments of gentlemen on the other side; but I forbore to exercise it, in consideration of my respect for Mr. Martin. But I said, that if any thing should be omitted by him, I would take the liberty of addressing the court, to supply the omission. There is scarcely any thing which Mr. Martin has not noticed. He has amused and instructed us; but it is difficult to come within that condition I had prescribed to myself; and there are two or three sentiments which I have much at heart, and on which I could not justify to myself to remain silent.

I do not mean to pass through the long series of authorities to which reference has been had, because not a single case has been adduced, by the gentlemen for the prosecution, that has not been fully answered, and its intended effects repelled. I shall endeavor to connect the observations I am about to make with the general subject already submitted to you; but though this cannot be done without mentioning principles which have been sufficiently discussed, I shall avoid repetition as much as possible, and endeavor to place the subject in such a clear point of view that our object cannot be misunderstood.

We have been charged with attempting to

exclude further testimony, and thereby encroaching on the sacred rights of the jury. Courts have their rights, and juries have theirs. They are capable of being reconciled, for they are bodies of the same system. But, although the court has no right to dictate the motion of the jury, it has a right to restrain them within their proper orbits. They are brethren in the administration of justice, not rivals in power; and if I were permitted to draw an analogy, I would say that the court is the father of the judicial family—that both are essential to administer justice according to law. This the court is bound to enforce, and this the jury are bound to obey.

Why should they complain? Because, say gentlemen, we suppress testimony. How do we suppress testimony? They have a *carte blanche*, and are at liberty to suppose every other evidence, except what they know does not exist; that is, the presence of Mr. Burr, and that actual force was employed. They may, if they can, prove every thing short of these things. Have not gentlemen seized these with great eagerness? They have kept their eyes on the court, but alarmed the ears of the jury. They have professed to talk in the abstract, but have described with a pencil whose strokes, dark as Erebus, and intended similitude and application, could not be mistaken. They have thrown, with rhetorical magic, into the cauldron of public opinion, already overboiling, poisonous ingredients, to the ruin of Colonel Burr. We wage an unequal war—an individual against the whole power and influence of the United States. We have to defend ourselves but with law and fact. Only permit us, if you please, to come with this dreadful disparity (for thus we have to contend), even when clothed with the mail of innocence. We ask for the benefit of the law. Why should we be upbraided for asking no more than the law has given us? That we must have. There is not a power on earth that can refuse us what the law gives. It is a privilege given for good reasons as a check to prevent the danger of perversion to oppression; of degeneracy to tyranny. We have fundamental fact to proceed upon—the absence of Colonel Burr from the scene of action. His absence is acknowledged; and if it were not, it is proved by us. Hence emerges a question, whether any facts, which can be proved, can convict him as a principal in the treason alleged to have been committed in his absence. If he were not present at Blannerhasset's Island, as stated in this indictment, how can he be convicted as a principal? After the admission that he was absent, how can they succeed? They cannot add one iota to what relates to this part of the business. It is a rule that cannot be controverted, that when an indispensable position cannot be

\* A full report of this extraordinary trial, was taken in shorthand by Mr. T. Carpenter, and published in 3 vols., 8vo. 1807.

"As to 'Burr's conspiracy,'" says Mr. Sullivan, "that unfortunate man, on leaving the vice-presidency, in 1805, became a wanderer. He appeared in the western States, in the course of that year, and there attempted to carry into effect some designs, but precisely of what character is not certain. It may be that he calculated on a war with Spain, and intended to advance his own interests under the supposed approbation of the administration, as Miranda did. It may be that he intended to possess himself of Mexico; or perhaps to plunder New Orleans; or to sever the Union with the aid of Spain, and found a western empire; perhaps he intended, as a last resort, to effect a settlement of lands on the Washita river. His purposes do not appear to have been disclosed, so that they can be placed beyond conjecture."—*Familiar Letters on Public Characters*, page 243.

proved, the court may interpose with respect to the law, and state its necessity to the jury. This is not a case of equivocal testimony, where credibility and mere weight are to be considered, which it would be improper for the court to decide upon. We ask your opinion of facts, concerning which there is no doubt. Why should the trial proceed, if it should be the opinion of the court that proof of his absence cannot support the charge of his being present as an actor? Surely not to add fuel to the general inflammation, which has already spread far and wide, and that only for the mere purpose of gratifying any one man or set of men; for this court sits not for the amusement of the public fancy or the gratification of public malignity.

But, say they, may not the jury decide the law and the fact against the opinion of the court? But is it proper to produce a struggle between the court and jury? Ought the jury to disregard the opinion of the court when it is confessedly correct? When the court tells the jury truly, that the *substratum* does not exist, a respectable jury never did and never will find a verdict of guilty.

They say that they are determined to probe this conspiracy, as it is called, to the bottom; and therefore they make these extraordinary efforts; but is there no respect that counsel ought to have for their character, to prevent them from pressing on the jury doctrines which they know to be illegal? Is there no respect due from the jury to the admonition of the court? If irrelevant testimony be to be admitted, twenty or twenty-five days, or more, may be spent in hearing what has no relation to the subject, and cannot affect us. It is in vain, therefore, to proceed. What ought we to expect from the court? Its authority. If the law is to be regarded, we have a right to call on the court for the exercise of its authority to prevent the introduction of illegal testimony.

If, indeed, as Mr. Hay and Mr. Wirt said, the consequences of this interposition of the court would be the annihilation of the rights of the jury, I would answer, that any individual on earth ought to be sacrificed rather than that so great a danger should be realized. I wish not to touch so inestimable an institution. But there exists no such danger. Why do we wish to have juries? It is that men of our own condition, and who have a fellow-feeling for us, should determine controversies and try accusations against individuals among us; so that no standing jurisdiction or permanent tribunal is to be employed to dictate the fate of any individual. It is a wise and humane regulation, that a jury should thus interpose between the public and an individual. For it is very improbable that oppression will ever take place on that side. All is safe while decisions are on the side of tenderness. No precedent can be drawn from all this to sanction injustice or oppression.

It is objected that juries would thus be prostrated, and that the court might, on the same principle, decide against the accused. Who thus complains? Was it ever argued that the rights of the jury and the safety of the citizen were destroyed by a favorable opinion to the accused?

Let a Jeffreys arise and succeed you on that seat; let him arrogate to himself what powers he pleases; let him encroach on privileges and tyrannize over the rights of juries, and all those who shall advocate them; yet what examples would he take? If he would permit precedent to be quoted as authority before him, would he take the exercise of mercy for his example?

When this Jeffreys shall arise he will not act on precedent, but will boldly bound over every barrier if he wish to seize his victim; but if he were to follow precedent, he would never take one on the side of mercy. He would pursue an example of rigid severity and cruelty. Would Judge Chase have been impeached, if, in the case of Callender, he had decided on the side of mercy; if he had yielded to the high-wrought pretensions of Callender? Would he have been impeached for a misdirection, in issuing process, had he directed a summons to issue instead of a *capias*? Sir, it is a phenomenon in law and judicial proceedings, that the accused should suffer now (as the counsel for the prosecution insist), in order to provide security for persons who may be accused hereafter; that his rights must be taken from him, in order that others may not lose theirs!

Sir, I am not surprised that the people have been taught to believe that we mean to smother testimony. I have been told of it out of doors, and I have no doubt that such is the general opinion. This is the effect of the improper publicity given to whatever passes here. I have remonstrated against this malpractice, but in vain. We see that not a particle of intelligence is received, no step is taken, nothing happens here, which is not in twelve hours made public. This intelligence will be diffused, augmented, and distorted. We make no attempts of this sort. These reports remain uncontradicted, and excite prejudices against us. I wish to know, then, how it can be shown that we have such an object in view. Where is the proof of smothering testimony? We deny the truth of the accusation. We wish not to suppress testimony, but it is our duty to oppose the admission of what is not lawful evidence, since so much prejudice has been excited against the accused.

Away, then, with this idea, that we wish to suppress testimony. We only claim what the law allows; and I am afraid that if he be deprived of this right, there never will be again found, in this country, a tribunal able to fortify itself against popular clamor, or counsel sufficiently firm to support an unfortunate client against popular fury. I want no precedents. I want nothing but pre-eminence of virtue and

talents to discern and decide. And while you are placed on the seat of justice, we fear not to meet that high tone of popularity, that popular rage which is so much, and, we say, so unjustly inflamed against us; if not met now, it never can be met.

We are told that every man is a politician, and even judges may be so hereafter. Then we shall be in danger. When they become political partisans we shall be in danger. This evinces the greater necessity of adhering inflexibly to principle.

I do not wish to go beyond the seas for examples, but I cannot help reminding the court of the conduct of the illustrious Mansfield. He stood, on a critical occasion, as this court stood at the beginning of this trial. I am inclined to believe that the public prejudice has relented; but suppose it to be still in its full fury, the situations are similar. When the popular frenzy was at its utmost height he had to encounter it. He displayed that unshaken firmness which this court now feels. He was unmoved by popular clamor, unawed by popular fury. He wanted no popularity but that which he was sure would follow him and survive when he was no more; that which ever pursues meritorious conduct, the high meed of virtue, which is the best stimulus to the most honorable exertions.

If it were to be said that we want authority and precedent here for this firmness of conduct, we can say that our Washington is recorded in trials not wholly different. He was once in a situation where he might have been alarmed with what was called the popular voice. He was assailed by popular clamor and discontent, but he was firm to his purpose. I can only say that he would have been without a historian if he had not withstood them.

An argument has been already used, which, if well understood, cannot be resisted. I feel it to be firmly established, but I hope the court will excuse me for indulging myself in further explaining the principle; not because I deem it necessary after what has been said, but because I want the jury, this audience, and all the world to know and be impressed with what are the rights of the accused. It is this: that when a fact, essential to the guilt of the accused, does not exist, all further proceedings against him should cease.

Another circumstance has been offered to your consideration with a view of exciting the public indignation. Blannerhassett has been most piteously represented as a seduced person, and it is asked, what! shall the seducer be acquitted, and the seduced be the victim? And in order to make the representation more affecting, and to excite our sympathy to a higher degree, the gentleman has gravely introduced his lovely wife and prattling children, his hatred of war, his love of music, of literature, and chemistry, till his seduction by the arts of Mr. Burr.\*

Sir, I believe that Blannerhassett is innocent. I know him to be innocent, and he may defy all the efforts to be made against him. But the situation in which he is placed does not reflect criminality on Colonel Burr. Do you examine into the character and conduct of the accessory in examining the principal—as whether he were under the influence of the principal or not? Is not this an invitation to subvert all the rules of the law? Blannerhassett is not to be examined, but he is to be called small in guilt, because that of Mr. Burr is to be magnified. This is done, not out of any cordiality to him, but in hatred of Burr. The question now, when he is tried as a principal, is, is he guilty or not? Did he commit the fact? Whereas, according to law, when an accessory before the fact is examined or tried, the only question is, did he abet or aid him who committed the act? and not whether he committed the act himself. This argument was not addressed to you, but to those who surround this great tribunal.

But the constitution, the law of England, and American decisions have been quoted, to show that the prime mover is at any distance a principal. I will examine all these; but the constitution is what I have most at heart, and what I will first consider.

Mr. Hay says that he would rather the constitution should perish than the rights of juries. I revere both. I revere the constitution, because, among other blessings, it secures the rights of juries; and there is no man who hears me, but is convinced that the rights incident to the trial by jury are secured by it.

The constitution is not express upon this subject; and if it be not express, are you to narrow it? Are you to conjecture so as to create a new crime, not only in name but in substance, by introducing a new person which the constitution never contemplated, by adding “procuring” as a crime to “doing?”

But we are told that the constitution has adopted terms in treason which are well known. Be it so. But it is only to tell you what is the “*lesa majestas*” of the nation. It tells you that the legislature should never avail themselves of the malignant passions of the people, so as to call that “*lesa majestas*” which is not so in fact.

The constitution only intended the classification of crimes which should be considered as tending directly to the subversion of the government. It was left to the legislature to say what particular acts should have this tendency, and to provide the punishment. The constitution supposed that there could be only two classes of cases in which the government could be subverted: levying war, and adhering to the enemies of the country. It never could have been intended to import aid from the common law to expound the constitution. It is only a general description; and the legislature are left to provide a proper remedy for the evil. The legislature, therefore, might have declared at any time, what should be done with

\* Vide post, Speech of Mr. Wirt.

an accessory before the fact. They might punish this and other accessorial offences, by a law coming within the sweeping clause which empowers Congress to make all laws which shall be necessary and proper to carry their enumerated powers into effect.

But the constitution is to be considered according to reason and moral right; and both ask if a transcendent offender be to slip down into an accessory? The answer is, that if reason which judges of the fitness of things, moral right which gives more latitude, or even common sense, be permitted to add persons according to different men's ideas of propriety, what advantage is derived from the principle which has been so long cherished, that penal laws shall be construed strictly? What becomes of the doctrine? What benefit can be had from the constitution containing precise terms and an express enumeration of powers, if moral right, common sense and reason, according to the diversity of human opinions, are to be applied to infer and imply its meaning? We may apply these to Eutopia, Oceana, or even the visions of Plato, or rather, the tribunal of Draco: for wherever they, or what is the same thing, men's different conceptions of them, are to determine what shall be right construction, there will be a tribunal of blood. Language must indeed be understood as the world understands it; but the ideas must not be extended beyond the natural import. I will ask a man of the most common understanding, who is not connected with the cause of Colonel Burr, whether a man, at the distance of three hundred miles from the scene of operation, can be the same as the actual perpetrator? Whether a man could be charged as present at the spot, and doing an act when he was at three hundred miles' distance? What would be his answer? Would he not call it the grossest absurdity? Does not the very idea of law revolt at such a construction? The constitution does not impose it. The common law, the gentleman admits, does not impose it; but common sense requires it! So that common sense shall say absence is presence, and shall consider one man as another, and plunge a dagger into his breast against justice and reason! It is contrary to the common understanding of the world. It is impossible, in the nature of things, that a man at the distance of three hundred miles can be present. This transcends the wildest extravagance of fancy. By metaphysical legerdmain they annihilate space and consolidate identities!

The apprehensions which were entertained, and the dangers predicted but a short time past from construction, seem to have been soon forgotten. If you begin so early with creating offences by mere analogy, as constructive presence, where will you stop? Trace the consequences of taking one man for another. Reflect how many shades and approaches there are to guilt. If you can confound these without distinction, and charge a man, who commanded an act to be done by his agent, to have been

present and to have done it himself; if you charge a crime directly contrary to facts, you mislead and surprise; you are arriving at a point which will involve doctrines of treason which were never intended by the framers of the constitution.

There is a passage in Hume's history which well applies to this subject. I do not say that it will be considered as an authority in a case of treason; but it merits our attention as suggesting useful reflections with respect to the progress of guilt and the promptitude with which the agents of those in power will oppress and destroy, to gratify their employers. The court will recollect the conduct of Henry II. towards Thomas Becket, archbishop of Canterbury, whom he had raised from a low station to the highest offices; but whom he cordially hated and persecuted a long time, on account of his signal ingratitude, his haughtiness, and rigid opposition to his power, which he considered to be treason.

After we had issued sentence of excommunication against some of the king's best friends, when the king was informed of it, being vehemently agitated, he burst into an exclamation against his servants, "whose want of zeal," he said, "had so long left him exposed to the enterprises of that ungrateful and imperious prelate." Four gentlemen of his household, taking these passionate expressions for a hint for Becket's death, immediately communicated their thoughts to each other, and swearing to avenge their prince's quarrel, secretly withdrew. They took different routes, but moving in concert, and having an eye to the same end, arrived at the appointed place of meeting about the same time, and soon committed the horrid deed of assassination. Thus a supposed hint from a prince was sufficient for the murder of the prelate.

When the constitution was debated clause by clause in the convention, it was not insinuated by any of its opposers, that the construction now contended for should ever be resorted to. The idea was never advanced, that a man might be thus made a traitor by fiction and relation, and considered as constructively present and constructively an actor, though at the distance of several hundred miles from the place of action; much less that such a construction would ever be countenanced in any of our courts of justice. Not even so much as a conjecture was hazarded to that effect. It never entered into my mind, nor do I believe it entered into that of any other member of that body. And if the common law, with this doctrine of constructive presence, had been a part of this constitution, all the talents on earth would never have been able to have carried it.

The people of Virginia thought themselves safe on this subject. The construction, now advocated, was not avowed, much less supported, in the State Convention.

It is contended that this ought to be construed by the same rules as a common statutory

crime. What is the reason why, when an offence is made felony by the statute, it has all the consequences of a felony at common law? When the legislature declare a particular offence in positive terms to be a felony, then it must necessarily in the nature of things, like all other felonies, partake of their incidents, nature and consequences; for it would not be a felony without having the qualities and conditions of a felony. But though this be the inevitable construction when a felony is created in general terms by a statute, yet if it be not so expressed, it is not to be interpreted so as to advance the remedy. There never was a question upon it as applied to statutes in capital cases. The books are uniformly against it, because penal laws must be strictly construed. The courts make an exception in favor of the accused, when there is the smallest departure from the letter of the statute. Is it not a principle that wherever a part fails to apply, the rest will be construed not to apply? If in England, a particular crime be created a felony, that is the generical description of the offence; and by the principles of the common law, all the consequences of a felony at common law follow. So that the common law is applied to and ingrafted on the statute. But as the common law does not exist in the United States, it cannot be constructively applied to treason. It is true that common law terms are adopted in the constitution and certain laws made under it; but they are not used in reference to the common law as a system, but in the common acceptance as mere terms of art; of which the true meaning may be found in any dictionary. And in relation to treason, the words used mean only a classification of the crime. They have no connection with the common law. How, then, is it to be interpreted? The gentleman asks what the members of the convention would have said of this case. I am not sure what the members of the convention would have said of this construction, nor that any individual there would have said what his opinion was; but this I will undertake to say, that there never was a more fruitful source of oppression than this interpretation. The members of the convention would have particularly provided for such a case, if they had intended so uncommon a construction. They would have expressed it in the instrument itself, if they had contemplated a construction never heard of before; for you meet no instance of it in all the books. But there is no need of construction. The terms are plain. Constructive presence is neither expressed nor necessary to be implied. It was never thought of. But I will answer to the gentleman's question, what the members of the convention would have said, that, rather than that it was a "*casus omissus*," it was not intended to punish such offences. If it be asked why it was not mentioned, it may be answered, because it was not intended to be considered as guilt. But, without adopting this exposition it may be said that

it was left to the future care of the legislature to enact laws on the subject and punish acts of accessory agency; so that nothing should be referred to the imagination. When laws should take place, they would be understood in the plain and natural sense of the terms employed to express them.

Mr. Hay and Mr. Wirt have availed themselves of a learned description of the statute of the United States, and the effect of its different clauses, in order to show the responsibility, as principal traitors, of persons standing in the situation of the accused; and that it is impossible that it could ever have been intended that they should escape unpunished. The legislature may pass laws, at any time, to prevent their impunity; but if they were to escape by legislative failure or want of power, it would be better than that this court should transcend its authority and construe that to be treason which is not so within the true meaning of the constitution; which it would do, if it were to consider Colonel Burr as present and an actor.

Both Mr. Hay and Mr. Wirt allege, that he ought not to be considered as an accessory; that he is the prime mover and projector; and, therefore, he ought not to escape punishment. If he escape, is it not because the law declares that he ought to escape? Ought they to complain, if the law pronounce him to be innocent? Is the acquittal of the accused, in a capital case, matter of regret? Ought any man to be punished but according to law?

By what rule, then, shall this question be decided? By example? Washington himself was assailed many years before he died. Jefferson has been also assailed; and Robertson, whose character was above censure, was also assailed. His history was assailed; but he left it to mankind to judge for him; and posterity will do him justice. (See his letter to Gibbon.) And many other great and eminent characters have been in like manner assailed. So that neither virtue nor talents can secure from censure and obloquy.

By prudence? What would prudence accomplish? Criticism is severe and unjust every where; and many, from mere motives of indolence, are indisposed to inquire: some from party spirit, malignity in general, and particular enmity. Every thing, even what had no affinity to the subject, would have been raked up, that could injure Colonel Burr.

By the effect? Assertion is nothing. Testimony, complete and satisfactory, is not to be collected. What would have been the effect of the affidavits published against him in the public prints, though taken *ex parte*? If believed, for a moment, he ought not to have attended to them. The facility of denying that such a partial examination of witnesses ought to be considered an acquittal would have rendered his efforts unavailing.

By communicating his answer to their suspicions, to men in office? Nothing would have led them to listen to him but curiosity. Gov



ernment ought not to be answered till it call. All the protestations of innocence on earth would have had no effect. They would have been as unavailing as in a case of murder; but on every proper occasion, Burr did communicate and answer every call.

By imparting to confidential friends? It will be shown that he has done this always. After he had done it, they assailed him worse. If arguments like these prevail, do not use a cobweb veil; but give an air of magnanimity to your conduct by avowing a resolve to condemn and save trouble. Choose to be a Robespierre or a jury of Stuarts. If he make such communications, he is violently assailed. If he be silent, he is charged with mysterious conduct. It is true, that by the law of England, all persons concerned, principal and accessories, are equally punishable. As Mr. Hay says, the crime covers the whole ground; what is not occupied by the one is held by the other. What then? Does he mean to say, that because it is not so here, because the whole ground is not covered here, you must stretch the law sufficiently to cover it? Is this his plan for supplying omitted cases? Suppose an act merely preparatory, as writing a letter to advise or deputing an agent to encourage by a person who had never carried arms, nor been at Blannerhassett's, nor joined them at the mouth of Cumberland or any other place, could he be indicted as a principal who had carried arms and levied war? However unlawful such an act might be, it certainly could not amount to levying war. What the law would be on such occasion, I will not venture to say; but I ask, where is the book that declares it to be an act of levying war? Compare that part which you consider as authority, with that case, or that now before the court, and you will find that neither case would be treason of levying war. Though a person who forms a scheme and conducts it to maturity, and is at the head of his party, may be considered as a principal, yet he who only performs a mere preparatory act, as writing a letter, giving an advice relative to the acts at Blannerhassett's island, cannot be deemed guilty of levying war. He cannot have levied war, when he has done nothing more than to advise. To advise treason, when treason is not actually begun, cannot be considered more than as an accessory act. Is there not a plain difference between these two cases?

The man who instigates another to murder a man, is considered only as an accessory; because not in a situation to afford immediate assistance to the person who perpetrates the act. If you apply this reasoning to Colonel Burr, as he was at a great distance, and could not give immediate aid to the actors, the same conclusion must result: that he could not be considered in any other light than that of an accessory before the fact. The gentleman says that Bonaparte was not present at the battle of Austerlitz. We know that he commanded the army;

that he was on the ground; that he directed its movements and laid the plan of the battle, as much as if he had been in the heat of the action. He was present, and the principal actor. When you consider this case according to the English decisions, you can never believe that Mr. Burr can be considered as being at Blannerhassett's island.

But we are told that he is not said to be at Blannerhassett's island; that he is not alleged to have been there. The indictment charges him with having committed treason on Blannerhassett's island, with a great multitude of persons traitorously assembled and gathered together, armed and arrayed in a warlike manner; that he and those persons joined together at Blannerhassett's island; and that he did with them, then and there, ordain, prepare, and levy war against the United States. Is not this a declaration that he was present? Could he have joined them there without being present with them? You must understand most clearly, from the terms of the indictment, that he was actually there. It admits of no other construction. But, sir, the American decisions have been quoted upon this point. It is said that the opinion of the Supreme Court, in the case of Bollman and Swartwout, was that any person "who performs any part, however minute, and however remote from the scene of action, and who is leagued in the general conspiracy, shall be considered as a traitor." The import of these words, "perform any part, however minute, or however remote from the scene of action," as meant by the Supreme Court, has certainly been misunderstood by gentlemen. Does the opinion of the Supreme Court mean by these words, "minute and remote part," that a party may be indicted as present who was absent? or that he who did not act, but merely advised, shall be indicted as having actually performed a part? The language of that court does not warrant the inference that the indictment may be so drawn as to mislead, instead of giving the accused notice of the proof to be exhibited against him, that he may prepare his defence. Does it mean that a person, at the distance of five hundred miles, shall be considered as present? Does it mean that they shall be punished according to the degree of their guilt? Does it mean to say that persons, in the character of accessories, shall be punished? Does it mean to say that there are no accessories in treason, and that all are principals? What then is the meaning of the opinion? It must be this: by "remote from the scene of action," must be intended that any person, directly and indissolubly connected with the party perpetrating the act, though not at the spot, but near enough to give immediate aid at the time and place, if necessary, is to be considered as engaged in the plot and guilty of treason. The judges viewed this subject without considering the question whether a man could be a principal notwithstanding his absence. Such an idea never occurred. The constitution ought

to be construed according to the plain and obvious import of its words. It will be in danger if there should be a departure from this construction. It never can be supposed that its framers intended that this fancy and imagination should be indulged in its future exposition.

But, say gentlemen, whether he be an accessory or a principal, the indictment stands right. I deny it, sir. We have the soundest reasons to say that it cannot be supported in either case. Regarding him as a principal, the evidence cannot support it; and as it does not charge him as an accessory, no evidence of accessorial acts could prove it. The specification of the offence, according to the evidence to be brought to support it, has been always held necessary in England, and will never be deemed less useful by the people of this country. Are we to regard British forms and precedents? You have seen what they are. There have been several quotations from Hale and others on this point. But one quotation from 1 Hale, p. 238, would establish my position, were it properly understood, though it is relied on by them to show that an accessory before the fact may be indicted generally or specially. This authority shows that an accessory after the fact must be specially charged; that the indictment against the receiver of a traitor "must be special of the receipt." But they contend that the accessory before the fact may be generally charged from these subsequent words, "and not generally that he did the thing, which may be otherwise, in case of one that is a procurer, counsellor, or consenter." He refers to Conier's case, as well as to Arden's case, in support of the principle that receivers of traitors must be specially charged. But he refers to no authority as to an accessory before the fact. Authorities were read yesterday, to show that indictments for receiving and procuring must stand on the same footing. Mr. Martin having so fully explained them, it will be sufficient for me to observe what may have escaped his notice. The words on which they found their argument, are, "which may be otherwise in case of one that is a procurer," &c. Can this passage be absurd enough to mean, that though a receiver shall be specially indicted, so as to be informed of the charge to be proved against him, yet a procurer, whose offence is more heinous, is not to be notified of the accusation against him, but may be surprised by a general charge? He does not show in what manner it is to be otherwise, nor that it shall be, but that it may be otherwise. That he intended to speak of indictments for compassing the death of the king is unquestionable. It has been already sufficiently shown, that such indictments charge the compassing or imagining the death of the king in general terms; and that almost any thing, evincing an intention to kill him, or to subvert his government, is sufficient to support such a general accusation.

The case in Kelynge, before referred to, supports our construction; and Hale, in the place

just quoted, adds that if the receiver were to be indicted in the same indictment with the principal offender, he ought to be "indicted specially of the receipt." And in the 2d vol. p. 223, heretofore quoted, he sufficiently shows that the procurer ought also to be specially charged. Sir, is it not necessary to inquire what is the consequence of the conduct of Colonel Burr? If it be accessorial, the indictment must show the "*quomodo*." Why is any indictment in any case necessary? Why must indictments distinguish between principal actors in treason and those who are but accessorial agents? Because it informs them of the nature of the accusation, and enables them to defend themselves. The indictment against the adviser or procurer ought to notify him of the act of which he is considered the indirect perpetrator. You must show the manner in which he is liable.

Nor does this doctrine rest on English authority alone. It is not merely founded on the common law, as has been urged. It is supported by the principles of pleading, which we have adopted. The forms of pleading show the sense of courts, as guides to reason. The eighth amendment of the constitution also requires it. It not only secures the enjoyment "of a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed," but also that the accused "shall be informed of the nature and cause of the accusation, confronted with the witnesses against him," &c.

Consider this subject attentively. Reflect on the mode of prosecution which is advocated, and see whether it do not deprive us of this constitutional privilege. The language of any man, addressed to the accused on this subject, would be, "You are charged with treason, but you are to be informed of the nature and cause of the accusation, so as to enable you to prepare your defence." The indictment is shown him. It tells him that he actually levied war by raising men and committing acts on a particular day and at a particular place. Knowing his innocence of the charge, he pleads not guilty, and produces testimony to prove that he was not there; that during the whole time he was many hundred miles distant, or perhaps beyond sea. Against all this, when he comes to be tried, he is told, "It was not you that raised the army. We do not mean that you were there in person. You needed not to have summoned twenty or thirty witnesses to prove that you were not present. But you did what we insist is the same thing as levying war. You wrote a letter, in which you advised the thing to be done." He would very naturally answer, "If that be your meaning, I have been misled and deceived; I am not prepared for trial, and I pray that the cause may be continued." But he is told, "Your prayer cannot be granted. The jury are sworn, and you must take your trial."

Now, sir, should it be in the power of any government thus to mislead and destroy any

man it may select for its victim? (I do not pretend to say that such is the disposition of this government; nay, I am sure that it is not.) But no child, who could read the constitution, would suppose that it could be ever so construed. Yet, sir, what babies we were if we expected the constitution to be thus correctly construed! If this construction be adopted and this species of indictment admitted, it will pervert this very palladium of our safety into an instrument of destruction. Mr. Hay knows that I intend nothing offensive to him; but when he tells me that his indictment fits this case, he deceives us. He deludes us into a trial in ignorance of the accusation, and drags us blindfold to the scaffold. This is the most intolerable hardship. Examine history from the beginning of the world, you will find nothing like the character of an American legislature, who, professing to be the votaries of liberty, and to admire the principles of a free constitution, would permit such horrid oppression of their citizens; to keep them in the dark, to hold out the semblance of security to innocence, but to expose it to inevitable destruction! Sir, I could mention a thousand acts of oppression that would not be so severe as this. The party accused is entrapped and ensnared. He is taken by surprise, and forced into a trial with the rope round his neck, without any means of preparation or defence. This is substance; not a phantom of the imagination. The forms of trial, the instruments of nominal justice, are to be wrought up into an engine of destruction. We call on you as guardians of this constitution, as far as depends on your acts, to preserve it from violation. I ask you to remember the difficulty of repairing the mischiefs of an oppressive construction, and permitting, unopposed, encroachments on the dearest privileges of the people. If this attempt be successful, where will persecution stop? If this be correct, fate has sealed it in your mind, and the law is only to force it. I feel myself so much roused by the idea of the effect that this doctrine would have, that did I not know that it came from a pure source, without any intention to injure or oppress, I would be alarmed. I would say, as Paul said to Agrippa, Believest thou in the constitution? I know thou dost. I ask you to save this rock of our salvation. For myself I do not care. I have not much to care, with respect to the remainder of my life. But for my children I feel the affection and solicitude natural to a parent; and for my country, those sentiments of patriotism which become every good citizen. Let not the great palladium of public liberty be undermined. I pray you that the rights of the citizen may not be immolated at the shrine of faction and persecution; that innocence may not be engulfed by the adoption of the doctrine of the prosecutors. American judges never can do this. I was going to use language too strong; American judges dare not do it.

[Mr. Randolph here replied to several argu-

ments of the opposite counsel; he then concluded his speech as follows.]

Let me add a few words with respect to the necessity of force, to what has been already said on that subject. According to what has been often observed in the course of this trial, the crime consists of the beginning, the progress, and consummation, in the course of which some force must be exhibited. A man might begin a crime and stop short, and be far from committing the act. He might go on one step still further, without incurring guilt. It is only the completion of the crime that the law punishes. Suppose an army were embodied by Mr. Burr, and they only assembled and separated without having committed any act; what would the government have to complain of? When they punish a man for murdering another, it is because he is dead. When a man is punished for a robbery, it is because a person has been put in fear and his property taken from him without his consent. So it is with respect to every other crime; while it is in an incipient state it is disregarded. No person is punishable who is only charged with such an inchoate incomplete offence. The intention is never punished. In such cases time is allowed for repentance, at any time before its consummation. Such an offence as this is never punishable, unless in the case of a conspiracy; and even on a prosecution charging that offence specially, the act of conspiring must be satisfactorily established. Here no injury has arisen to the commonwealth. No crime has been perpetrated. The answer to this is, that there were preparations to commit it. As far as communications have been made to the government, there is no possibility of proving a complete act, yet those accused must be punished. Then their rule of law is, that wherever there is a beginning of a crime, it shall be punished lest it should grow to maturity! Is this the spirit of American legislation and American justice? Is it the spirit of its free constitution to consider the germ as the consummation of an offence? the intention, so difficult to be ascertained and so easy to be misrepresented and misunderstood, as the act itself? In such a system it may be a source of lamentation that no more than death can be inflicted on the completion of the crime. Death, death, is to be the universal punishment, the watchword of humane legislation and jurisprudence!

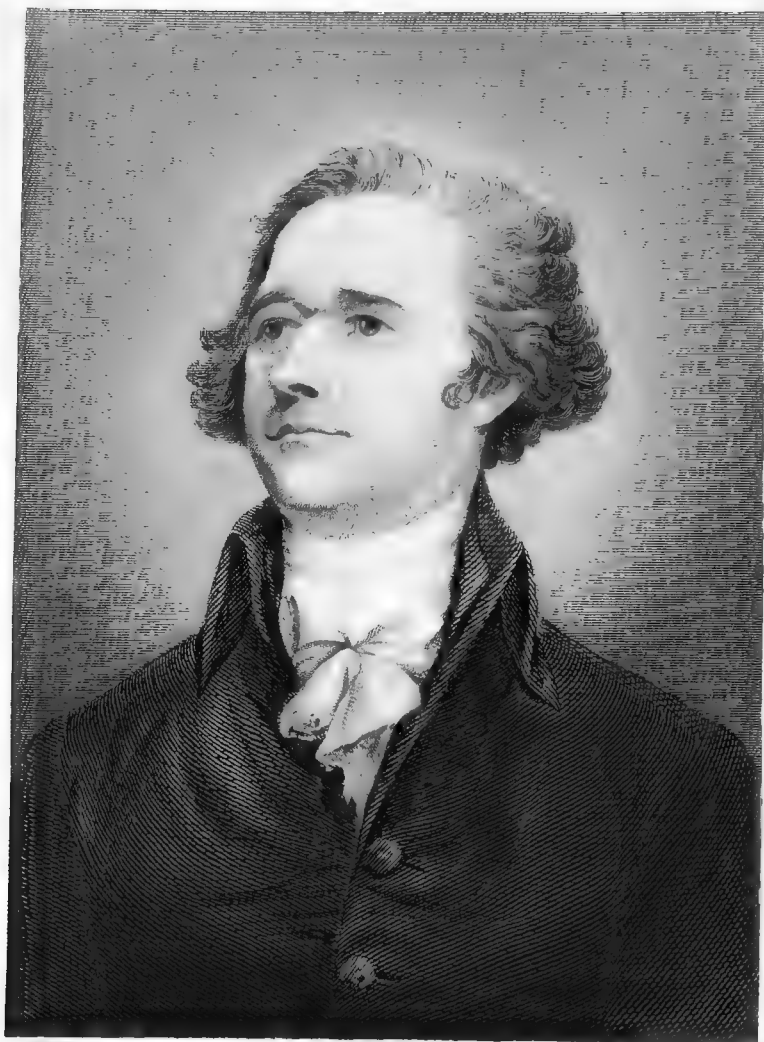
When we mentioned the idea of force, I was not a little amazed at the manner in which they attempted to repel the argument. It was said that they were prepared to show potential force; that fear was used; that an assemblage was drawn together to act on the fears of the people. This fear begins at New Orleans, mounts the Mississippi against the stream, and fixes itself at Blannerhassett's island. Henry IV. fell a sacrifice to the predictions of the Jesuits. They determined to destroy him, and predicted that he would fall; and he did fall. I may safely admit that fear really existed at

New Orleans, because the man who was interested to excite it had it in his power most effectually to do so. A great conspiracy with vast numbers and means is feigned. A particular day is announced as the time of attack. The militia are brought together. They "surround the city, spread the alarm in the coffee-houses and other public places; guard the river, for they are coming in the next flood of the Mississippi." Thus terror and apprehension were excited by every stratagem imaginable. Are we to be sacrificed by base and insidious arts like these? by the artifices of a man interested in our destruction to effect his own preservation?

I have done, sir. I find myself hurt that I could not give a greater scope to my feelings on this all-important subject. I will only add one remark, which I hope will be excused and considered as applying to all who occupy the sacred seat of justice. Judges have passed through the temple of virtue and arrived at

that of honor; but we find that it is a just decree from the free will of the people, that the floor of that temple is slippery. Some may suppose that because the wheel of fortune is not seen immediately to move, it is at rest. The rapidity deceives the sight. He who means to stand firm in that temple must place his hand on the statue of wisdom, the pedestal of which is a lion. These are the only qualities by which they can be useful in their honorable station. Popular effusion and the violence and clamor of party they will disregard. It is the more necessary, as judges may hereafter mingle in politics; and they are but men, and the people are divided into parties. In the conflicts of political animosity, justice is sometimes forgotten or sacrificed to mistaken zeal and prejudice. We look up to the judiciary to guard us. One thing I am certain of, that you will not look at consequences; that you will determine "*fiat justitia*," let the result be what it may.





*Hamilton*







## ALEXANDER HAMILTON.

ABOUT the year 1730, "Alexander Hamilton, of Grange," in Ayrshire, Scotland, married Elizabeth, the eldest daughter of Sir Robert Pollock, by whom he had several children. James, the father of the subject of the present sketch, was the fourth son. Being bred a merchant, he emigrated to the West Indies in search of fortune; but, through a too liberal and "easy temper," met with severe reverses, and subsequently lived in pecuniary dependence. He married a daughter of Faucette, one of the Huguenots who fled from France on the revocation of the edict of Nantes, and had several sons, of whom Alexander was the youngest.

Alexander Hamilton was born in Nevis, one of the British West Indian islands, on the eleventh of January, 1757. On the decease of his mother, which occurred while he was quite young, he was placed with one of her relatives, who resided at Santa Cruz. Here he acquired the rudiments of the French and English languages, the former of which he afterwards wrote and spoke with the ease and fluency of a native. He early displayed an ardent fondness for literary pursuits, became a lover of books, and devoted his hours to miscellaneous reading, under the guidance of Doctor Knox, a respectable Presbyterian clergyman, "who, delighted with the unfolding of his mind, took a deep interest in his welfare."

In 1769 he was placed in the counting-room of Mr. Nicholas Cruger, a wealthy and most worthy merchant of Santa Cruz. In this capacity he manifested the greatest fidelity and attention, which soon attracted the attention of his patron. But he aspired to a loftier position. The "inward promptings of his mind" looked far beyond the details of his avocation. In a letter to one of his schoolfellows, written about this period, he said, "I condemn the grovelling condition of a clerk, or the like, to which my fortune condemns me, and would willingly risk my life, though not my character, to exalt my station. I am confident that my youth excludes me from any hopes of immediate preferment, nor do I desire it; but I mean to prepare the way for futurety." Such was the purpose of Hamilton at the age of twelve years. He continued his studies during the few leisure hours he could command from his laborious mercantile duties, perfecting himself in mathematics, ethics, and general biography. Among his favorite authors were Pope and Plutarch, on the last of which he prepared several curious notes and observations. He also often exercised his powers in composition on various subjects. On the occasion of the terrific hurricane which swept over the Leeward Islands, in the autumn of 1772, before its effects had passed away, he prepared a description of the scene, which was published in the neighboring island of St. Christopher's, where it excited universal attention, and finally led to his future preferment. His friends and patrons, on learning that he was the author of the "elegant and precise description," determined to send him to New York for the purpose of acquiring a more thorough education. He left the West Indies a short time after, and arrived at Boston in the month of October, 1772. From thence he proceeded to New York, where he at once entered into the society of its most learned and distinguished families.

Soon after he was placed in the celebrated grammar school at Elizabethtown, New Jersey, which was then under the patronage of Governor Livingston and Elias Boudinot, and the immediate supervision and instruction of Francis Barber, afterwards a distinguished and accomplished

officer in the American army. Finishing his preparatory studies, he entered King's (now Columbia) College, where he soon "gave extraordinary displays of richness of genius and energy of mind."

While in college Hamilton continued his habit of composition with great application and success. Some of his poetical productions are still extant, and evince no ordinary merit. His talent for satire was also exercised at this time. "John Holt, who then published a Whig paper in New York," says Troup, "had, by his zeal in the American cause, drawn upon himself the invectives of all the ministerial writers; these invectives Hamilton burlesqued in doggerel rhyme, with great wit and humor. He also presented me with a manuscript of fugitive poetry, which I considered as a strong evidence of the elasticity of his genius, and have often lamented that it was lost with my books and papers during the war."

On the sixth of July, 1774, "the great meeting in the fields" was holden, to consider the rights of the colonies, and resist the tyranny of the Boston Port Bill, the earliest manifestation of the British Ministry's policy of compulsion. Here Hamilton appeared and first took part in the public deliberations. "The novelty of the attention," says his son, "his youthful countenance, his slender and diminutive form, awakened curiosity and arrested attention. Overawed by the scene before him, he at first hesitated and faltered; but as he proceeded, almost unconsciously, to utter his accustomed reflections, his mind warmed with the theme, his energies were renewed, and after a discussion clear, cogent, and novel, of the great principles involved in the controversy, he depicted, in glowing colors, the long-continued and long-endured oppressions of the mother country; he insisted on the duty of resistance, pointed to the means and certainty of success, and described the waves of rebellion sparkling with fire, and washing back on the shores of England the wrecks of her power, her wealth, and her glory. The breathless silence ceased as he closed, and the whispered murmur, 'It is a collegian! it is a collegian!' was lost in loud expressions of wonder and applause at the eloquence of the young stranger." In the winter of 1774 and early part of the year 1775, he published, anonymously, some powerful arguments favoring the pacific measures of defence recommended by Congress, and encouraging the policy of domestic manufactures as the means of rendering less necessary the use of foreign commerce. He also insisted upon the rights of the colonies to constitutional freedom, trial by jury, and freedom from taxation, except by their own consent. In this discussion he was opposed by Dr. Cooper, the President of the college of which he was a member, and many other wits and politicians of the ministerial side of the question, all of whom pronounced it absurd to suppose that so young a man as Hamilton could be their opponent. He was thenceforward the oracle of the patriots, and as such was beloved and honored by them.

On the commencement of the war in 1775, Hamilton was among the first to turn his attention to active military service. While yet a collegiate, he joined a body of volunteer militia in New York, and reduced his knowledge of the art of war to practice. In March, of the following year, having been appointed captain of a company of artillery, he entered the service and soon after attended at the battle on Long Island. His conduct at the action at White Plains, on the twenty-eighth of October of the same year, won the applause of Washington, and after the battles of Trenton and Princeton, in which he displayed unusual military talent and bravery, he was appointed to his staff, with the rank of lieutenant-colonel. He remained in the family of Washington until the spring of 1781, and during that severe and eventful period became the commander-in-chief's "principal and most confidential aid." He was a welcome associate with the officers of the army, and by his brilliant genius, the frankness of his disposition and the kindness of his heart, won the esteem and admiration of all around him. During this period, a principal portion of the correspondence of Washington devolved upon Colonel Hamilton. "The pen for our army," says Troup, "was held by Hamilton; and for dignity of manner, pith of matter and elegance of style, General Washington's letters are unrivalled in military annals."

After the surrender of Burgoyne, in the fall of the year 1777, Hamilton was deputed to proceed to Albany, to procure from General Gates a reinforcement of troops, then necessary to reduce General Howe, who at that time held possession of Philadelphia. This negotiation he

consummated with the greatest ability and judgment. At the battle of Monmouth, which occurred in the month of June following, he was on the field under the Marquis Lafayette, and displayed the greatest activity, skill and courage. The same year he was selected to meet the British commissioners for consultation respecting a general exchange of prisoners.

Hamilton now turned his attention to the finances of his country, which had become involved in great disorder. The depreciation of paper money, which had been issued in enormous quantities, destroyed public faith and credit, and the government and army were reduced to the severest distress and want. This pressure was more severely felt at head-quarters. Hamilton's position in the family of Washington gave him an opportunity of judging of its effect upon his chief, and he realized the necessity of immediate and decisive relief. In this situation he addressed an anonymous letter to Robert Morris, one of the first commercial gentlemen of the period, and then a delegate to Congress from Pennsylvania, in which he suggested a plan to place the financial affairs of the country upon a firm basis. The restoration of depreciated paper money, the currency and good faith of the country was to be brought about in a foreign loan, to the extent of two millions sterling, assisted by a vigorous taxation, and a United States Bank, to be supported by foreign as well as by domestic loans in the depreciated currency at a very low ratio. This bank was to be continued ten years, and was to rest on the basis of public and private faith—was to form the medium of circulation, absorb the depreciated paper, and supply the requisite loans to the government. This plan was in part adopted by Congress, through the agency of the Bank of Pennsylvania, a voluntary institution, which on the twenty-second of June, 1780, was reported to Congress and received their patronage. About this time Hamilton addressed a letter to Mr. Duane, a member of Congress from New York, in which he suggested the idea of a general convention for the reorganization of the government, and indicated the mode of urging its necessity upon the minds of the people, by "sensible and popular writings, which should conform to the views of Congress:" thus hinting at the idea which originated the *Federalist*, whose far-reaching views on national polity so eminently aided in the adoption of the present Federal Constitution. This is, without doubt, the ablest production on the affairs of the Union that appeared during the Revolution.\*

Colonel Hamilton married the second daughter of General Schuyler on the fourteenth of December, 1780, and from that time became a citizen of the State of New York. In the following February he left the family of General Washington, but still continued in the army. Being now relieved from the duties of an aid, he again turned his attention to the situation of the country, which was then encompassed with difficulties and dangers. The public credit was hastening to an unfavorable termination. In this crisis he submitted the plan of a national bank to Mr. Morris, the superintendent of finance, as the only alternative that could give a sound paper credit to government and render it successful and safe. This plan was laid before Congress on the seventeenth of May; on the twenty-sixth it was adopted, and soon after incorporated under the name of the Bank of North America. That institution, with the aid of the Bank of Pennsylvania, which had been established during the previous year, was of inestimable service in restoring the credit of the country, developing its resources, and carrying on the concluding scenes of the war. This year Hamilton commenced a series of essays, under the title of *The Continentalist*, in which he examined and discussed the features of the original confederacy, and enumerated the powers with which it ought to be clothed. The later numbers of this series were not prepared until after the siege of Yorktown, at which Colonel Hamilton was present.

After his retirement from the family of Washington, he was exceedingly solicitous to obtain a separate command in some light corps. This desire was at last gratified, and he was attached to the division under the command of his friend the Marquis Lafayette, and distinguished himself in leading a night attack upon the British redoubts at Yorktown. This was the last act of Colonel Hamilton's military life. On the termination of the active duties of the war, he commenced the study of the law, and in 1782 was admitted to the bar of the Supreme Court of New

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\* Life of Alexander Hamilton, by his son, vol. 1, pp. 284-305.

York. In the summer of the same year he was appointed a delegate to Congress, by the legislature of New York, and in the subsequent November took his seat in that body, where he continued until the autumn of the next year. In this station he manifested the strongest and most disinterested zeal for the welfare of the country, in upholding the honor of the government against the attacks of the discontents of the army and the clamor of public creditors. On the return of peace, and after the recovery of New York in the fall of 1783, he resumed the practice of law; but the public affairs still occupied his thoughts. In the latter part of the year 1784, his celebrated pamphlets, addressed "to the considerate citizens of New York," over the signature of *Phocion*, excited universal attention, and drew forth able replies, under the signatures of *Anti-Phocionite*, *Mentor*, and others.

Colonel Hamilton did not remain long out of public life. In 1786 he was elected to the General Assembly from the city of New York, and distinguished himself by his efforts to avert the dangers and evils that hung over the country. His services in settling the difficulties which existed at that time consequent upon the independence of Vermont, were eminent; and the devotedness he displayed in recommending the establishment of a federative republic, was prompt and energetic. He was appointed to attend the convention at Philadelphia in 1787, and after the adoption of the federal constitution by that body, he urged its ratification by an explanation and vindication of its principles, in that celebrated and immortal work, *The Federalist*.<sup>\*</sup> On the meeting of the New York convention, Colonel Hamilton appeared as a member. The active part he had taken in the formation of the constitution, and his familiarity with its principles, rendered his situation one of great responsibility. This he sustained with the highest ability and success. His speeches on that occasion evince the wisdom of the commentator and the eloquence of the finished orator.

In 1789, Colonel Hamilton was placed at the head of the United States Treasury, where he remained until January, 1795. His success in restoring the public confidence, and placing the financial affairs of the nation upon a sure and solid foundation, is too well known to require notice here. "How he fulfilled the duties of such a place, at such a time," said the matchless Webster, "the whole country perceived with delight, and the whole world saw with admiration. He smote the rock of the national resources, and abundant streams of revenue gushed forth. He touched the dead corpse of the public credit, and it sprung upon its feet. The fabled birth of Minerva, from the brain of Jove, was hardly more sudden or more perfect than the financial system of the United States, as it burst forth from the conceptions of Alexander Hamilton."<sup>†</sup>

The war between England and the republic of France broke out during the period of Hamilton's secretaryship. As a member of Washington's cabinet, he advocated the proclamation of neutrality, and supported it in a series of vigorous and elaborate essays, under the signatures of *No Jacobin* and *Pacificus*. He also rendered signal service in advising the mission of Mr. Jay in 1794, and on the negotiation and completion of his treaty, he vindicated its wisdom and justice.<sup>‡</sup> He had now returned to the practice of his profession, and was enjoying an extraordinary share of business. As a commercial lawyer he was a great favorite with the New York merchants; and his profound knowledge in the law of nations, joined to his sterling qualities of mind and eloquence, placed him in the first rank of his profession.

In the early part of 1798, Colonel Hamilton again took up his pen in defence of his country. At this time he published a series of essays, under the title of *Titus Manlius*, in which he exposed the danger which was to be anticipated from the hostile position of France, and urged the necessity of determined resistance to the many depredations which were then committed upon American commerce, under the sanction and encouragement of that country. His suggestions were so correct, and his conclusions so just, that they were ultimately carried into execution, and won the applause of his countrymen. On the establishment of a provincial army

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<sup>\*</sup> Vide note at page 126.

<sup>†</sup> Works of Daniel Webster, vol. 1, page 199.

<sup>‡</sup> Vide Camillus, Works of Alexander Hamilton.

in 1798, he was appointed inspector-general—a trust which did not prevent the practice of his profession, which he continued until his death, which occurred in a duel with Aaron Burr, on the twelfth of July, 1804. The particulars of this event are too familiar for repetition in this place.

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THE FEDERAL CONSTITUTION.

In the Convention of New York, on the twentieth of June, 1788, the second section of the first article of the constitution having been read, and the following amendment proposed, "*Resolved*, That it is proper that the number of representatives be fixed at the rate of one for every twenty thousand inhabitants, to be ascertained on the principles mentioned in the second section of the first article of the constitution, until they amount to three hundred; after which, they shall be apportioned among the States, in proportion to the number of inhabitants of the States respectively: and that before the first enumeration shall be made, the several States shall be entitled to choose double the number of representatives for that purpose, mentioned in the constitution;" Mr. Hamilton addressed the convention as follows:

MR. CHAIRMAN: The honorable member, who spoke yesterday, went into an explanation of a variety of circumstances to prove the expediency of a change in our national government, and the necessity of a firm union; at the same time, he described the great advantages which this State, in particular, receives from the confederacy, and its peculiar weaknesses when abstracted from the Union. In doing this, he advanced a variety of arguments, which deserve serious consideration. Gentlemen have this day come forward to answer him. He has been treated as having wandered in the flowery fields of fancy; and attempts have been made to take off from the minds of the committee that sober impression which might be expected from his arguments. I trust, sir, that observations of this kind are not thrown out to cast a light air on this important subject, or to give any personal bias on the great question before us. I will not agree with gentlemen who trifle with the weaknesses of our country, and suppose that they are enumerated to answer a party purpose, and to terrify with ideal dangers. No; I believe these weaknesses to be real, and pregnant with destruction. Yet, however weak our country may be, I hope we shall never sacrifice our liberties. If, therefore, on a full and candid discussion, the proposed system shall appear to have that tendency, for God's sake, let us reject it. But let us not mistake words for things, nor accept doubt-

ful surmises as the evidence of truth. Let us consider the constitution calmly and dispassionately, and attend to those things only which merit consideration.

No arguments drawn from embarrassment or inconvenience ought to prevail upon us to adopt a system of government radically bad; yet it is proper that these arguments, among others, should be brought into view. In doing this, yesterday, it was necessary to reflect upon our situation; to dwell upon the imbecility of our Union; and to consider whether we, as a State, could stand alone. Although I am persuaded this convention will be resolved to adopt nothing that is bad, yet I think every prudent man will consider the merits of the plan in connection with the circumstances of our country; and that a rejection of the constitution may involve most fatal consequences. I make these remarks to show, that though we ought not to be actuated by unreasonable fear, yet we ought to be prudent.

This day, sir, one gentleman has attempted to answer the arguments advanced by my honorable friend; another has treated him as having wandered from the subject. This being the case, I trust I shall be equally indulged in reviewing the remarks which have been made.

Sir, it appears to me extraordinary, that while gentlemen in one breath acknowledge that the old confederation requires many material amendments, they should in the next deny that its defects have been the cause of our political weakness, and the consequent calamities of our country. I cannot but infer from this, that there is still some lurking, favorite imagination, that this system, with corrections, might become a safe and permanent one. It is proper that we should examine this matter. We contend that the radical vice in the old confederation is, that the laws of the Union apply only to States in their corporate capacity. Has not every man who has been in our legislature experienced the truth of this position? It is inseparable from the disposition of bodies who have a constitutional power of resistance, to examine the merits of a law. This has ever been the case with the federal requisitions. In this examination, not being furnished with those lights which directed the deliberations of the general government, and incapable of embracing the general interests of the Union, the States have almost uniformly weighed the requisitions by their own local interests, and have only ex-

executed them so far as answered their particular convenience or advantage. Hence there have ever been thirteen different bodies to judge of the measures of Congress—and the operations of government have been distracted by their taking different courses. Those which were to be benefited, have complied with the requisitions; others have totally disregarded them. Have not all of us been witnesses to the unhappy embarrassments which resulted from these proceedings? Even during the late war, while the pressure of common danger connected strongly the bond of our Union, and incited to vigorous exertions, we felt many distressing effects of the impotent system. How have we seen this State, though most exposed to the calamities of the war, complying, in an unexampled manner, with the federal requisitions, and compelled by the delinquency of others to bear most unusual burdens. Of this truth, we have the most solemn proof on our records. In 1779 and 1780, when the State, from the ravages of war, and from her great exertions to resist them, became weak, distressed, and forlorn, every man avowed the principle which we now contend for; that our misfortunes, in a great degree, proceeded from the want of vigor in the continental government. These were our sentiments when we did not speculate, but feel. We saw our weakness, and found ourselves its victims. Let us reflect that this may again, in all probability, be our situation. This is a weak State; and its relative station is dangerous. Your capital is accessible by land, and by sea is exposed to every daring invader; and on the north-west, you are open to the inroads of a powerful foreign nation. Indeed, this State, from its situation, will, in time of war, probably be the theatre of its operations.

Gentlemen have said that the non-compliance of the States has been occasioned by their sufferings. This may in part be true. But has this State been delinquent? Amidst all our distresses, we have fully complied. If New York could comply wholly with the requisitions, is it not to be supposed that the other States could in part comply? Certainly every State in the Union might have executed them in some degree. But New Hampshire, who has not suffered at all, is totally delinquent; North Carolina is totally delinquent. Many others have contributed in a very small proportion; and Pennsylvania and New York are the only States which have perfectly discharged their federal duty.

From the delinquency of those States who have suffered little by the war, we naturally conclude, that they have made no efforts; and a knowledge of human nature will teach us that their ease and security have been a principal cause of their want of exertion. While danger is distant, its impression is weak, and while it affects only our neighbors, we have few motives to provide against it. Sir, if we have national objects to pursue, we must have national revenues. If you make requisitions

and they are not complied with, what is to be done? It has been well observed, that to coerce the States is one of the maddest projects that was ever devised. A failure of compliance will never be confined to a single State. This being the case, can we suppose it wise to hazard a civil war? Suppose Massachusetts, or any large State, should refuse, and Congress should attempt to compel them; would they not have influence to procure assistance, especially from those States who are in the same situation as themselves? What picture does this idea present to our view? A complying State at war with a non-complying State: Congress marching the troops of one State into the bosom of another: this State collecting auxiliaries and forming perhaps a majority against its federal head. Here is a nation at war with itself. Can any reasonable man be well disposed towards a government which makes war and carnage the only means of supporting itself—a government that can exist only by the sword? Every such war must involve the innocent with the guilty. This single consideration should be sufficient to dispose every peaceable citizen against such a government.

But can we believe that one State will ever suffer itself to be used as an instrument of coercion? The thing is a dream—it is impossible—then we are brought to this dilemma: either a federal standing army is to enforce the requisitions, or the federal treasury is left without supplies, and the government without support. What, sir, is the cure for this great evil? Nothing, but to enable the national laws to operate on individuals, in the same manner as those of the States do. This is the true reasoning of the subject, sir. The gentlemen appear to acknowledge its force; and yet while they yield to the principle, they seem to fear its application to the government.

What then shall we do? Shall we take the old confederation as the basis of a new system? Can this be the object of the gentlemen? Certainly not. Will any man who entertains a wish for the safety of his country, trust the sword and the purse with a single assembly organized on principles so defective—so rotten? Though we might give to such a government certain powers, with safety, yet to give them the full and unlimited powers of taxation and the national forces, would be to establish a despotism; the definition of which is, a government in which all power is concentrated in a single body. To take the old confederation, and fashion it upon these principles, would be establishing a power which would destroy the liberties of the people. These considerations show clearly, that a government totally different must be instituted. They had weight in the convention which formed the new system. It was seen, that the necessary powers were too great to be trusted to a single body: they therefore formed two branches, and divided the powers, that each might be a check upon the other. This was the result of their wisdom;

and I presume that every reasonable man will agree to it. The more this subject is explained, the more clear and convincing it will appear to every member of this body. The fundamental principle of the old confederation is defective—we must totally eradicate and discard this principle before we can expect an efficient government. The gentlemen who have spoken to-day, have taken up the subject of the ancient confederacies; but their view of them has been extremely partial and erroneous. The fact is, the same false and impracticable principle ran through most of the ancient governments. The first of these governments that we read of, was the Amphictyonic confederacy. The council which managed the affairs of this league, possessed powers of a similar complexion to those of our present Congress. The same feeble mode of legislation in the head, and the same power of resistance in the members, prevailed. When a requisition was made, it rarely met a compliance; and a civil war was the consequence. Those which were attacked, called in foreign aid to protect them; and the ambitious Philip, under the mask of an ally to one, invaded the liberties of each, and finally subverted the whole.

The operation of this principle appears in the same light in the Dutch republics. They have been obliged to levy taxes by an armed force. In this confederacy, one large province, by its superior wealth and influence, is commonly a match for all the rest; and when they do not comply, the province of Holland is obliged to compel them. It is observed, that the United Provinces have existed a long time; but they have been constantly the sport of their neighbors, and have been supported only by the external pressure of the surrounding powers. The policy of Europe, not the policy of their government, has saved them from dissolution. Besides, the powers of the Stadtholder have served to give an energy to the operations of this government, which is not to be found in ours. This prince has a vast personal influence: he has independent revenues: he commands an army of forty thousand men.

The German confederacy has also been a perpetual source of wars. They have a diet, like our Congress, who have authority to call for supplies: these calls are never obeyed; and in time of war, the imperial army never takes the field till the enemy are returning from it. The emperor's Austrian dominions, in which he is an absolute prince, alone enable him to make head against the common foe. The members of this confederacy are ever divided and opposed to each other. The king of Prussia is a member; yet he has been constantly in opposition to the emperor. Is this a desirable government?

I might go more particularly into the discussion of examples, and show that, wherever this fatal principle has prevailed, even as far back as the Lycian and Achæan leagues, as well as the Amphictyonic confederacy, it has proved

the destruction of the government. But I think observations of this kind might have been spared. Had they not been entered into by others, I should not have taken up so much of the time of the committee. No inference can be drawn from these examples, that republics cannot exist: we only contend that they have hitherto been founded on false principles. We have shown how they have been conducted, and how they have been destroyed. Weakness in the head has produced resistance in the members: this has been the immediate parent of civil war: auxiliary force has been invited; and a foreign power has annihilated their liberties and their name. Thus Philip subverted the Amphictyonic, and Rome the Achæan republic.

We shall do well, sir, not to deceive ourselves with the favorable events of the late war. Common danger prevented the operation of the ruinous principle, in its full extent: but, since the peace, we have experienced the evils; we have felt the poison of the system in its unmingled purity.

Without dwelling any longer on this subject, I shall proceed to the question immediately before the committee.

In order that the committee may understand clearly the principles on which the general convention acted, I think it necessary to explain some preliminary circumstances.

Sir, the natural situation of this country seems to divide its interests into different classes. There are navigating and non-navigating States—the northern are properly the navigating States: the southern appear to possess neither the means nor the spirit of navigation. This difference of situation naturally produces a dissimilarity of interests and views respecting foreign commerce. It was the interest of the northern States, that there should be no restraints on their navigation, and that they should have full power, by a majority in Congress, to make commercial regulations in favor of their own, and in restraint of the navigation of foreigners. The southern States wished to impose a restraint on the northern, by requiring that two-thirds in Congress should be requisite, to pass an act in regulation of commerce: they were apprehensive that the restraints of a navigation law would discourage foreigners, and by obliging them to employ the shipping of the northern States, would probably enhance their freight. This being the case, they insisted strenuously on having this provision engrafted in the constitution; and the northern States were as anxious in opposing it. On the other hand, the small States, seeing themselves embraced by the confederation upon equal terms, wished to retain the advantages which they already possessed: the large States, on the contrary, thought it improper that Rhode Island and Delaware should enjoy an equal suffrage with themselves: from these sources a delicate and difficult contest arose. It became necessary, therefore, to compromise; or the conven-

tion must have dissolved without effecting any thing. Would it have been wise and prudent in that body, in this critical situation, to have deserted their country? No. Every man who hears me—every wise man in the United States, would have condemned them. The convention were obliged to appoint a committee for accommodation. In this committee the arrangement was formed as it now stands; and their report was accepted. It was a delicate point; and it was necessary that all parties should be indulged. Gentlemen will see, that if there had not been unanimity, nothing could have been done: for the convention had no power to establish, but only to recommend a government. Any other system would have been impracticable. Let a convention be called to-morrow—let them meet twenty times; nay, twenty thousand times: they will have the same difficulties to encounter; the same clashing interests to reconcile.

But, dismissing these reflections, let us consider how far the arrangement is in itself entitled to the approbation of this body. We will examine it upon its own merits.

The first thing objected to is that clause which allows a representation for three-fifths of the negroes. Much has been said of the impropriety of representing men who have no will of their own. Whether this be reasoning or declamation I will not presume to say. It is the unfortunate situation of the southern States to have a great part of their population, as well as property, in blacks. The regulation complained of was one result of the spirit of accommodation which governed the convention, and without this indulgence no union could possibly have been formed. But, sir, considering some peculiar advantages which we derive from them, it is entirely just that they should be gratified. The southern States possess certain staples, tobacco, rice, indigo, &c., which must be capital objects in treaties of commerce with foreign nations, and the advantage which they necessarily procure in these treaties will be felt throughout all the States. But the justice of this plan will appear in another view. The best writers on government have held that representation should be compounded of persons and property. This rule has been adopted, as far as it could be, in the constitution of New York. It will, however, by no means be admitted, that the slaves are considered altogether as property. They are men, though degraded to the condition of slavery. They are persons known to the municipal laws of the States which they inhabit, as well as to the laws of nature. But representation and taxation go together, and one uniform rule ought to apply to both. Would it be just to compute these slaves in the assessment of taxes, and discard them from the estimate in the apportionment of representatives? Would it be just to impose a singular burden without conferring some adequate advantage?

Another circumstance ought to be considered.

The rule we have been speaking of is a general rule, and applies to all the States. Now, you have a great number of people in your State which are not represented at all, and have no voice in your government; these will be included in the enumeration—not two-fifths nor three-fifths, but the whole. This proves that the advantages of the plan are not confined to the southern States, but extend to other parts of the Union.

I now proceed to consider the objection with regard to the number of representatives, as it now stands; I am persuaded the system, in this respect, stands on a better footing than the gentlemen imagine.

It has been asserted that it will be in the power of Congress to reduce the number. I acknowledge that there are no direct words of prohibition. But I contend that the true and genuine construction of the clause gives Congress no power whatever to reduce the representation below the number, as it now stands. Although they may limit, they can never diminish the number. One representative for every thirty thousand inhabitants is fixed as the standard of increase, till, by the natural course of population, it shall become necessary to limit the ratio. Probably, at present, were this standard to be immediately applied, the representation would considerably exceed sixty-five. In three years it would exceed one hundred. If I understand the gentleman, they contend that the number may be enlarged, or may not. I admit that this is in the discretion of Congress, and I submit to the committee, whether it be not necessary and proper. Still, I insist that an immediate limitation is not probable, nor was it in the contemplation of the convention. But, sir, who will presume to say to what precise point the representation ought to be increased? This is a matter of opinion, and opinions are vastly different upon the subject. A proof of this is drawn from the representations in the State legislatures. In Massachusetts the assembly consists of about three hundred; in South Carolina, of nearly one hundred; in New York there are sixty-five. It is observed generally, that the number ought to be large; let the gentlemen produce their criterion. I confess it is difficult for me to say what number may be said to be sufficiently large. On one hand it ought to be considered that a small number will act with more facility, system, and decision; on the other, that a large one may enhance the difficulty of corruption. The Congress is to consist, at first, of ninety-one members. This, to a reasonable man, may appear to be as near the proper medium as any number whatever; at least, for the present. There is one source of increase, also, which does not depend upon any constructions of the constitution; it is the creation of new States. Vermont, Kentucky, and Franklin will probably become independent: new members of the Union will also be formed from the unsettled tracts of western territory. These



must be represented, and will all contribute to swell the federal legislature. If the whole number in the United States be, at present, three millions, as is commonly supposed, according to the ratio of one for thirty thousand, we shall have, on the first census, a hundred representatives. In ten years thirty more will be added, and in twenty-five years the number will double; then, sir, we shall have two hundred, if the increase goes on in the same proportion. The convention of Massachusetts, who made the same objection, have fixed upon this number as the point at which they chose to limit the representation. But can we pronounce with certainty that it will not be expedient to go beyond this number? We cannot. Experience alone must determine. This matter may, with more safety, be left to the discretion of the legislature, as it will be the interest of the large and increasing States of Massachusetts, New York, Pennsylvania, &c., to augment the representation. Only Connecticut, Rhode Island, Delaware, and Maryland, can be interested in limiting it. We may, therefore, safely calculate upon a growing representation, according to the advance of population and the circumstances of the country.

The State governments possess inherent advantages which will ever give them an influence and ascendancy over the national government, and will for ever preclude the possibility of federal encroachments. That their liberties indeed can be subverted by the federal head is repugnant to every rule of political calculation. Is not this arrangement then, sir, a most wise and prudent one? Is not the present representation fully adequate to our present exigencies, and sufficient to answer all the purposes of the Union? I am persuaded that an examination of the objects of the federal government will afford a conclusive answer.

Many other observations might be made on this subject, but I cannot now pursue them, for I feel myself not a little exhausted; I beg leave, therefore, to waive for the present the further discussion of the question.

On the 21st Mr. Hamilton continued his remarks as follows:

When I had the honor to address the committee yesterday, I gave a history of the circumstances which attended the convention, when forming the plan before you. I endeavored to point out to you the principles of accommodation on which this arrangement was made, and to show that the contending interests of the States led them to establish the representation as it now stands. In the second place, I attempted to prove, that in point of number, the representation would be perfectly secure. Sir, no man agrees more perfectly than myself to the main principle for which the gentlemen contend. I agree that there should be a broad Democratic branch in the national legislature. But this matter, sir, depends on

circumstances. It is impossible, in the first instance, to be precise and exact with regard to the number, and it is equally impossible to determine to what point it may be proper in future to increase it. On this ground I am disposed to acquiesce. In my reasonings on the subject of government I rely more on the interests and opinions of men than on any speculative parchment provisions whatever. I have found that constitutions are more or less excellent as they are more or less agreeable to the natural operation of things. I am therefore disposed not to dwell long on curious speculations, or pay much attention to modes or forms, but to adopt a system whose principles have been sanctioned by experience, adapt it to the real state of our country, and depend on probable reasonings for its operation and result. I contend that sixty-five and twenty-six in two bodies afford perfect security in the present state of things, and that the regular progressive enlargement, which was in the contemplation of the general convention, will not leave an apprehension of danger in the most timid and suspicious mind. It will be the interest of the large States to increase the representation. This will be the standing instruction to their delegates. But, say the gentlemen, the members of Congress will be interested not to increase the number, as it will diminish their relative influence. In all their reasoning upon the subject, there seems to be this fallacy: they suppose that the representative will have no motive of action on the one side, but a sense of duty; or on the other, but corruption. They do not reflect that he is to return to the community; that he is dependent on the will of the people, and that it cannot be his interest to oppose their wishes. Sir, the general sense of the people will regulate the conduct of their representatives. I admit that there are exceptions to this rule; there are certain conjunctures when it may be necessary and proper to disregard the opinions which the majority of the people have formed. But in the general course of things, the popular views, and even prejudices, will direct the actions of the rulers.

All governments, even the most despotic, depend, in a great degree, on opinion. In free republics, it is most peculiarly the case. In these, the will of the people makes the essential principle of the government; and the laws which control the community, receive their tone and spirit from the public wishes. It is the fortunate situation of our country, that the minds of the people are exceedingly enlightened and refined. Here then we may expect the laws to be proportionably agreeable to the standard of perfect policy; and the wisdom of public measures to consist with the most intimate conformity between the views of the representative and his constituent. If the general voice of the people be for an increase, it undoubtedly must take place. They have it in their power to instruct their representatives; and the State legislatures, which appoint the

senators, may enjoin it also upon them. Sir, if I believed that the number would remain at sixty-five, I confess I should give my vote for an amendment; though in a different form from the one proposed.

The amendment proposes a ratio of one for twenty thousand. I would ask, by what rule or reasoning it is determined, that one man is a better representative for twenty than thirty thousand? At present we have three millions of people; in twenty-five years we shall have six millions; and in forty years, nine millions: and this is a short period, as it relates to the existence of States. Here, then, according to the ratio of one for thirty thousand, we shall have, in forty years, three hundred representatives. If this be true, and if this be a safe representation, why be dissatisfied? Why embarrass the constitution with amendments that are merely speculative and useless? I agree with the gentleman, that a very small number might give some color for suspicion: I acknowledge, that ten would be unsafe; on the other hand, a thousand would be too numerous. But I ask him, why will not ninety-one be an adequate and safe representation? This at present appears to be the proper medium. Besides, the President of the United States will be himself the representative of the people. From the competition that ever subsists between the branches of government, the President will be induced to protect their rights, whenever they are invaded by either branch. On whatever side we view this subject, we discover various and powerful checks to the encroachments of Congress. The true and permanent interests of the members are opposed to corruption: their number is vastly too large for easy combination: the rivalry between the houses will for ever prove an insuperable obstacle: the people have an obvious and powerful protection in their State governments. Should any thing dangerous be attempted, these bodies of perpetual observation will be capable of forming and conducting plans of regular opposition. Can we suppose the people's love of liberty will not, under the incitement of their legislative leaders, be roused into resistance, and the madness of tyranny be extinguished at a blow? Sir, the danger is too distant; it is beyond all rational calculation.

It has been observed by an honorable gentleman, that a pure democracy, if it were practicable, would be the most perfect government. Experience has proved, that no position in politics is more false than this. The ancient democracies, in which the people themselves deliberated, never possessed one feature of good government. Their very character was tyranny; their figure deformity. When they assembled, the field of debate presented an ungovernable mob, not only incapable of deliberation, but prepared for every enormity. In these assemblies, the enemies of the people brought forward their plans of ambition systematically. They were opposed by their enemies, of another

party; and it became a matter of contingency, whether the people subjected themselves to be led blindly by one tyrant or by another.

It was remarked yesterday, that a numerous representation was necessary to obtain the confidence of the people. This is not generally true. The confidence of the people will easily be gained by a good administration. This is the true touchstone. I could illustrate the position by a variety of historical examples, both ancient and modern. In Sparta, the Ephori were a body of magistrates, instituted as a check upon the senate, and representing the people. They consisted of only five men; but they were able to protect their rights, and therefore enjoyed their confidence and attachment. In Rome, the people were represented by three Tribunes, who were afterwards increased to ten. Every one acquainted with the history of that republic, will recollect how powerful a check to the senatorial encroachments this small body proved; how unlimited a confidence was placed in them by the people whose guardians they were; and to what a conspicuous station in the government their influence at length elevated the plebeians. Massachusetts has three hundred representatives; New York has sixty-five. Have the people in this State less confidence in their representation than the people of that? Delaware has twenty-one: do the inhabitants of New York feel a higher confidence than those of Delaware? I have stated these examples, to prove that the gentleman's principle is not just. The popular confidence depends on circumstances very distinct from considerations of number. Probably the public attachment is more strongly secured by a train of prosperous events, which are the result of wise deliberation and vigorous execution, and to which large bodies are much less competent than small ones. If the representative conducts with propriety, he will necessarily enjoy the good will of the constituent. It appears then, if my reasoning be just, that the clause is perfectly proper, upon the principles of the gentleman who contends for the amendment; as there is in it the greatest degree of present security, and a moral certainty of an increase equal to our utmost wishes.

It has been further, by the gentlemen in opposition, observed, that a large representation is necessary to understand the interests of the people. This principle is by no means true, in the extent to which the gentlemen seem to carry it. I would ask, why may not a man understand the interests of thirty as well as of twenty? The position appears to be made upon the unfounded presumption, that all the interests of all parts of the community must be represented. No idea is more erroneous than this. Only such interests are proper to be represented as are involved in the powers of the general government. These interests come completely under the observation of one, or a few men; and the requisite information is

by no means augmented in proportion to the increase of number. What are the objects of the government? Commerce, taxation, &c. In order to comprehend the interests of commerce, is it necessary to know how wheat is raised, and in what proportion it is produced in one district and in another? By no means. Neither is this species of knowledge necessary in general calculations upon the subject of taxation. The information necessary for these purposes, is that which is open to every intelligent inquirer; and of which five men may be as perfectly possessed as fifty. In royal governments there are usually particular men to whom the business of taxation is committed. These men have the forming of systems of finance, and the regulation of the revenue. I do not mean to commend this practice. It proves, however, this point; that a few individuals may be competent to these objects, and that large numbers are not necessary to perfection in the science of taxation. But granting for a moment, that this minute and local knowledge, the gentlemen contend for, is necessary, let us see, if under the new constitution, it will not probably be found in the representation. The natural and proper mode of holding elections, will be to divide the State into districts, in proportion to the number to be elected. This State will consequently be divided, at first, into six. One man from each district will probably possess all the knowledge gentlemen can desire. Are the senators of this State more ignorant of the interests of the people than the assembly? Have they not ever enjoyed their confidence as much? Yet, instead of six districts, they are elected in four; and the chance of their being collected from the smaller divisions of the State consequently diminished. Their number is but twenty-four; and their powers are co-extensive with those of the assembly, and reach objects which are most dear to the people—life, liberty and property.

Sir, we hear constantly a great deal, which is rather calculated to awake our passions, and create prejudices, than to conduct us to the truth, and teach us our real interests. I do not suppose this to be the design of the gentlemen. Why then are we told so often of an aristocracy? For my part, I hardly know the meaning of this word as it is applied. If all we hear be true, this government is really a very bad one. But who are the aristocracy among us? Where do we find men, elevated to a perpetual rank above their fellow-citizens, and possessing powers entirely independent of them? The arguments of the gentlemen only go to prove that there are men who are rich, men who are poor; some who are wise, and others who are not. That indeed every distinguished man is an aristocrat. This reminds me of a description of the aristocrats I have seen in a late publication, styled the Federal Farmer. The author reckons in the aristocracy, all governors of States, members of Congress, chief magistrates, and all officers of the militia. This description,

I presume to say, is ridiculous. The image is a phantom. Does the new government render a rich man more eligible than a poor one? No. It requires no such qualification. It is bottomed on the broad and equal principle of your State constitution.

Sir, if the people have it in their option to elect their most meritorious men, is this to be considered as an objection? Shall the constitution oppose their wishes, and abridge their most invaluable privilege? While property continues to be pretty equally divided, and a considerable share of information pervades the community, the tendency of the people's suffrages will be to elevate merit even from obscurity. As riches increase and accumulate in few hands, as luxury prevails in society, virtue will be in a greater degree considered as only a graceful appendage of wealth, and the tendency of things will be to depart from the republican standard. This is the real disposition of human nature: it is what neither the honorable member nor myself can correct; it is a common misfortune, that awaits our State constitution, as well as all others.

There is an advantage incident to large districts of election, which perhaps the gentlemen, amidst all their apprehensions of influence and bribery, have not adverted to. In large districts, the corruption of the electors is much more difficult. Combinations for the purposes of intrigue are less easily formed: factions and cabals are little known. In a small district, wealth will have a more complete influence; because the people in the vicinity of a great man, are more immediately his dependents, and because this influence has fewer objects to act upon. It has been remarked, that it would be disagreeable to the middle class of men to go to the seat of the new government. If this be so, the difficulty will be enhanced by the gentleman's proposal. If his argument be true, it proves that the larger the representation is, the less will be your choice of having it filled. But, it appears to me frivolous to bring forward such arguments as these. It has answered no other purpose than to induce me, by way of reply, to enter into discussions which I consider as useless, and not applicable to our subject.

It is a harsh doctrine, that men grow wicked in proportion as they improve and enlighten their minds. Experience has by no means justified us in the supposition that there is more virtue in one class of men than in another. Look through the rich and the poor of the community; the learned and the ignorant. Where does virtue predominate? The difference indeed consists not in the quantity, but kind of vices, which are incident to various classes; and here the advantage of character belongs to the wealthy. Their vices are probably more favorable to the prosperity of the State than those of the indigent, and partake less of moral depravity.

After all, sir, we must submit to this idea,

that the true principle of a republic is, that the people should choose whom they please to govern them. Representation is imperfect, in proportion as the current of popular favor is checked. This great source of free government, popular election, should be perfectly pure, and the most unbounded liberty allowed. Where this principle is adhered to; where, in the organization of the government, the legislative, executive and judicial branches are rendered distinct; where again the legislative is divided into separate Houses, and the operations of each are controlled by various checks and balances, and above all, by the vigilance and weight of the State governments; to talk of tyranny, and the subversion of our liberties, is to speak the language of enthusiasm. This balance between the national and State governments ought to be dwelt on with peculiar attention, as it is of the utmost importance. It forms a double security to the people. If one encroaches on their rights, they will find a powerful protection in the other. Indeed, they will both be prevented from overpassing their constitutional limits, by a certain rivalry, which will ever subsist between them. I am persuaded, that a firm union is as necessary to perpetuate our liberties, as it is to make us respectable; and experience will probably prove, that the national government will be as natural a guardian of our freedom, as the State legislatures themselves.

Suggestions, sir, of an extraordinary nature, have been frequently thrown out in the course of the present political controversy. It gives me pain to dwell on topics of this kind, and I wish they might be dismissed. We have been told that the old confederation has proved inefficacious, only because intriguing and powerful men, aiming at a revolution, have been for ever instigating the people, and rendering them disaffected with it. This, sir, is a false insinuation. The thing is impossible. I will venture to assert, that no combination of designing men under heaven, will be capable of making a government unpopular, which is in its principles a wise and good one, and vigorous in its operations.

The confederation was framed amidst the agitation and tumult of society. It was composed of unsound materials put together in haste. Men of intelligence discovered the feebleness of the structure, in the first stages of its existence; but the great body of the people, too much engrossed with their distresses to contemplate any but the immediate causes of them, were ignorant of the defects of their constitution. But when the dangers of war were removed, they saw clearly what they had suffered, and what they had yet to suffer, from a feeble form of government. There was no need of discerning men to convince the people of their unhappy situation; the complaint was co-extensive with the evil, and both were common to all classes of the community. We have been told that the spirit of patriotism and love of liberty are almost extinguished among the people, and that it has become a prevailing doctrine that republican principles ought to be hooted out of the world. Sir, I am confident that such remarks as these are rather occasioned by the heat of argument than by a cool conviction of their truth and justice. As far as my experience has extended, I have heard no such doctrine, nor have I discovered any diminution of regard for those rights and liberties, in defence of which, the people have fought and suffered. There have been, undoubtedly, some men who have had speculative doubts on the subject of government; but the principles of republicanism are founded on too firm a basis to be shaken by a few speculative and skeptical reasoners. Our error has been of a very different kind. We have erred through excess of caution, and a zeal false and impracticable. Our counsels have been destitute of consistency and stability. I am flattered with a hope, sir, that we have now found a cure for the evils under which we have so long labored. I trust that the proposed constitution affords a genuine specimen of representative and republican government, and that it will answer, in an eminent degree, all the beneficial purposes of society.

## THE FEDERAL CONSTITUTION.

This speech was delivered in the Convention of New York, on the twenty-fourth of June, 1788, in opposition to a resolution brought forward by Mr. G. Livingston, as an amendment to the constitution, which proposed; That no person should be eligible as a senator for more than six years, in any term of twelve years, and that the legislatures of the several States should have power to recall their senators, or either of them, and to elect others in their stead, to serve for the remainder of the time for which such senator or senators, so recalled, were appointed.

I am persuaded, Mr. Chairman, that I in my turn shall be indulged in addressing the committee. We all, in equal sincerity, profess to be anxious for the establishment of a republican government, on a safe and solid basis. It is the object of the wishes of every honest man in the United States, and I presume I shall not be disbelieved, when I declare, that it is an object of all others, the nearest and most dear to my own heart. The means of accomplishing this great purpose, become the most important study which can interest mankind. It is our duty to examine all those means with peculiar attention, and to choose the best and most effectual. It is our duty to draw from nature, from reason, from examples, the best principles of policy, and to pursue and apply them in the formation of our government. We should contemplate and compare the systems, which, in this examination, come under our view; distinguish, with a careful eye, the defects and excellencies of each, and discarding the former, incorporate the latter, as far as circumstances will admit, into our constitution. If we pursue a different course and neglect this duty, we shall probably disappoint the expectations of our country and of the world.

In the commencement of a revolution, which received its birth from the usurpations of tyranny, nothing was more natural than that the public mind should be influenced by an extreme spirit of jealousy. To resist these encroachments, and to nourish this spirit, was the great object of all our public and private institutions. The zeal for liberty became predominant and excessive. In forming our confederation, this passion alone seemed to actuate us, and we appear to have had no other view than to secure ourselves from despotism. The object certainly was a valuable one, and deserved our utmost attention. But, sir, there is another object, equally important, and which our enthusiasm rendered us little capable of regarding: I mean a principle of strength and stability in the organization of our government, and vigor

in its operations. This purpose can never be accomplished but by the establishment of some select body, formed peculiarly upon this principle. There are few positions more demonstrable than that there should be in every republic, some permanent body to correct the prejudices, check the intemperate passions, and regulate the fluctuations of a popular assembly. It is evident, that a body instituted for these purposes, must be so formed as to exclude, as much as possible, from its own character, those infirmities, and that mutability which it is designed to remedy. It is therefore necessary that it should be small, that it should hold its authority during a considerable period, and that it should have such an independence in the exercise of its powers as will divest it as much as possible of local prejudices. It should be so formed as to be the centre of political knowledge, to pursue always a steady line of conduct, and to reduce every irregular propensity to system. Without this establishment, we may make experiments without end, but shall never have an efficient government.

It is an unquestionable truth, that the body of the people in every country desire sincerely its prosperity: but it is equally unquestionable, that they do not possess the discernment and stability necessary for systematic government. To deny that they are frequently led into the grossest errors by misinformation and passion, would be a flattery which their own good sense must despise. That branch of administration especially, which involves our political relations with foreign states, a community will ever be incompetent to. These truths are not often held up in public assemblies; but they cannot be unknown to any who hear me. From these principles it follows, that there ought to be two distinct bodies in our government; one, which shall be immediately constituted by and peculiarly represent the people, and possess all the popular features; another, formed upon the principle, and for the purposes before explained. Such considerations as these induced the convention who formed your State constitution, to institute a senate upon the present plan. The history of ancient and modern republics had taught them, that many of the evils which these republics suffered, arose from the want of a certain balance and mutual control indispensable to a wise administration; they were convinced that popular assemblies are frequently misguided by ignorance, by sudden impulses, and the intrigues of ambitious men; and that some firm barrier against these operations was necessary: they therefore instituted your senate, and the benefits we have experienced, have fully justified their conceptions.

Now, sir, what is the tendency of the proposed amendment? To take away the stability of government, by depriving the Senate of its

permanency; to make this body subject to the same weakness and prejudices which are incident to popular assemblies, and which it was instituted to correct; and by thus assimilating the complexion of the two branches, destroy the balance between them. The amendment will render the senator a slave to all the capricious humors among the people. It will probably be here suggested, that the legislatures, not the people, are to have the power of recall. Without attempting to prove that the legislatures must be, in a great degree, the image of the multitude, in respect to federal affairs, and that the same prejudices and factions will prevail; I insist, that in whatever body the power of recall is vested, the senator will perpetually feel himself in such a state of vassalage and dependence, that he never can possess that firmness which is necessary to the discharge of his great duty to the Union.

Gentlemen, in their reasoning, have placed the interests of the several States and those of the United States in contrast; this is not a fair view of the subject; they must necessarily be involved in each other. What we apprehend is, that some sinister prejudice, or some prevailing passion, may assume the form of a genuine interest. The influence of these is as powerful as the most permanent conviction of the public good; and against this influence we ought to provide. The local interests of a State ought in every case to give way to the interests of the Union: for when a sacrifice of one or the other is necessary, the former becomes only an apparent, partial interest, and should yield, on the principle that the small good ought never to oppose the great one. When you assemble from your several counties in the legislature, were every member to be guided only by the apparent interest of his county, government would be impracticable. There must be a perpetual accommodation and sacrifice of local advantage to general expediency; but the spirit of a mere popular assembly would rarely be actuated by this important principle. It is therefore absolutely necessary that the Senate should be so formed, as to be unbiassed by false conceptions of the real interests, or undue attachment to the apparent good of their several States.

Gentlemen indulge too many unreasonable apprehensions of danger to the State governments; they seem to suppose, that the moment you put men into a national council, they become corrupt and tyrannical, and lose all their affection for their fellow citizens. But can we imagine that the senators will ever be so insensible of their own advantage, as to sacrifice the genuine interest of their constituents? The State governments are essentially necessary to the form and spirit of the general system. As long, therefore, as Congress have a full conviction of this necessity, they must, even upon principles purely national, have as firm an attachment to the one as to the other. This conviction can never leave them, unless they

become madmen. While the constitution continues to be read, and its principles known, the States must, by every rational man, be considered as essential, component parts of the Union; and therefore the idea of sacrificing the former to the latter is wholly inadmissible.

The objectors do not advert to the natural strength and resources of State governments, which will ever give them an important superiority over the general government. If we compare the nature of their different powers, or the means of popular influence which each possesses, we shall find the advantage entirely on the side of the States. This consideration, important as it is, seems to have been little attended to. The aggregate number of representatives throughout the States may be two thousand. Their personal influence will, therefore, be proportionally more extensive than that of one or two hundred men in Congress. The State establishments of civil and military officers of every description, infinitely surpassing in number any possible correspondent establishments in the general government, will create such an extent and complication of attachments, as will ever secure the predilection and support of the people. Whenever, therefore, Congress shall meditate any infringement of the State constitutions, the great body of the people will naturally take part with their domestic representatives. Can the general government withstand such an united opposition? Will the people suffer themselves to be stripped of their privileges? Will they suffer their legislatures to be reduced to a shadow and a name? The idea is shocking to common sense.

From the circumstances already explained, and many others which might be mentioned, results a complicated, irresistible check, which must ever support the existence and importance of the State governments. The danger, if any exists, flows from an opposite source. The probable evil is, that the general government will be too dependent on the State legislatures, too much governed by their prejudices, and too obsequious to their humors; that the States, with every power in their hands, will make encroachments on the national authority, till the Union is weakened and dissolved.

Every member must have been struck with an observation of a gentleman from Albany. Do what you will, says he, local prejudices and opinions will go into the government. What! shall we then form a constitution to cherish and strengthen these prejudices? Shall we confirm the distemper instead of remedying it? It is undeniable that there must be a control somewhere. Either the general interest is to control the particular interests, or the contrary. If the former, then certainly the government ought to be so framed, as to render the power of control efficient to all intents and purposes; if the latter, a striking absurdity follows: the controlling powers must be as numerous as the varying interests, and the operations of government must therefore cease: for the moment

you accommodate these different interests, which is the only way to set the government in motion, you establish a general controlling power. Thus, whatever constitutional provisions are made to the contrary, every government will be at last driven to the necessity of subjecting the partial to the universal interest. The gentlemen ought always, in their reasoning, to distinguish between the real, genuine good of a state, and the opinions and prejudices which may prevail respecting it: the latter may be opposed to the general good, and consequently ought to be sacrificed; the former is so involved in it, that it never can be sacrificed. Sir, the main design of the convention, in forming the Senate, was to prevent fluctuations and cabals. With this view, they made that body small, and to exist for a considerable period. Have they executed this design too far? The senators are to serve six years. This is only two years longer than the senators of this State hold their places. One third of the members are to go out every two years; and in six, the whole body may be changed. Prior to the revolution, the representatives in the several colonies were elected for different periods; for three years, for seven years, &c. Were those bodies ever considered as incapable of representing the people, or as too independent of them? There is one circumstance which will have a tendency to increase the dependence of the senators on the States, in proportion to the duration of their appointments. As the State legislatures are in continual fluctuation, the senator will have more attachments to form, and consequently a greater difficulty of maintaining his place, than one of shorter duration. He will therefore be more cautious and industrious to suit his conduct to the wishes of his constituents.

Sir, when you take a view of all the circumstances which have been recited, you will certainly see that the senators will constantly look up to the state governments with an eye of dependence and affection. If they are ambitious to continue in office they will make every prudent arrangement for this purpose, and whatever may be their private sentiments of politics, they will be convinced that the surest means of obtaining a re-election will be an uniform attachment to the interests of their several States.

The gentlemen, to support their amendment, have observed that the power of recall, under the old government, has never been exercised. There is no reasoning from this. The experience of a few years, under peculiar circumstances, can afford no probable security that it never will be carried into execution with unhappy effects. A seat in Congress has been less an object of ambition, and the arts of intrigue, consequently, have been less practised. Indeed, it has been difficult to find men who were willing to suffer the mortifications to which so feeble a government and so dependent a station exposed them.

Sir, if you consider but a moment the purposes for which the senate was instituted, and the nature of the business which they are to transact, you will see the necessity of giving them duration. They, together with the President, are to manage all our concerns with foreign nations; they must understand all their interests and their political systems. This knowledge is not soon acquired—but a very small part is gained in the closet. Is it desirable, then, that new and unqualified members should be continually thrown into that body? When public bodies are engaged in the exercise of general powers, you cannot judge of the propriety of their conduct but from the result of their systems. They may be forming plans which require time and diligence to bring to maturity. It is necessary, therefore, that they should have a considerable and fixed duration, that they may make their calculations accordingly. If they are to be perpetually fluctuating they can never have that responsibility which is so important in republican governments. In bodies subject to frequent changes, great political plans must be conducted by members in succession; a single assembly can have but a partial agency in them, and consequently cannot properly be answerable for the final event. Considering the senate, therefore, with a view to responsibility, duration is a very interesting and essential quality. There is another view in which duration in the senate appears necessary. A government, changeable in its policy, must soon lose its sense of national character, and forfeit the respect of foreigners. Senators will not be solicitous for the reputation of public measures in which they have had but a temporary concern, and will feel lightly the burden of public disapprobation in proportion to the number of those who partake of the censure. Our political rivals will ever consider our mutable counsels as evidence of deficient wisdom, and will be little apprehensive of our arriving at any exalted station in the scale of power. Such are the internal and external disadvantages which would result from the principle contended for. Were it admitted, I am fully persuaded, sir, that prejudices would govern the public deliberations, and passions rage in the counsels of the union. If it were necessary, I could illustrate my subject by historical facts; I could travel through an extensive field of detail, and demonstrate that wherever the fatal principle of—the head suffering the control of the members, has operated, it has proved a fruitful source of commotions and disorder.

This, sir, is the first fair opportunity that has been offered of deliberately correcting the errors in government. Instability has been a prominent and very defective feature in most republican systems. It is the first to be seen and the last to be lamented by a philosophical inquirer. It has operated most banefully in our infant republics. It is necessary that we apply an immediate remedy, and eradicate the poisonous principle from our government. If

this be not done, sir, we shall feel, and posterity will be convulsed by a painful malady.

On the 25th, Mr. Hamilton continued his remarks upon the same subject.

MR. CHAIRMAN: In debates of this kind it is extremely easy, on either side, to say a great number of plausible things. It is to be acknowledged that there is even a certain degree of truth in the reasonings on both sides. In this situation it is the province of judgment and good sense to determine their force and application, and how far the arguments advanced on one side are balanced by those on the other. The ingenious dress in which both may appear renders it a difficult task to make this decision, and the mind is frequently unable to come to a safe and solid conclusion. On the present question, some of the principles on each side are admitted, and the conclusions drawn from them denied, while other principles, with their inferences, are rejected altogether. It is the business of the committee to seek the truth in this labyrinth of argument.

There are two objects in forming systems of government—safety for the people and energy in the administration. When these objects are united, the certain tendency of the system will be to the public welfare. If the latter object be neglected, the people's security will be as certainly sacrificed as by disregarding the former. Good constitutions are formed upon a comparison of the liberty of the individual with the strength of government; if the tone of either be too high, the other will be weakened too much. It is the happiest possible mode of conciliating these objects, to institute one branch peculiarly endowed with sensibility, another with knowledge and firmness. Through the opposition and mutual control of these bodies, the government will reach, in its operations, the perfect balance between liberty and power. The arguments of the gentlemen chiefly apply to the former branch—the House of Representatives. If they will calmly consider the different nature of the two branches, they will see that the reasoning which justly applies to the Representative House will go to destroy the essential qualities of the Senate. If the former is calculated perfectly upon the principles of caution, why should you impose the same principles upon the latter, which is designed for a different operation? Gentlemen, while they discover a laudable anxiety for the safety of the people, do not attend to the important distinction I have drawn. We have it constantly held up to us, that as it is our chief duty to guard against tyranny, it is our policy to form all the branches of government for this purpose. Sir, it is a truth sufficiently illustrated by experience, that when the people act by their representatives they are commonly irresistible. The gentleman admits the position that stability is essential to the government, and yet enforces principles which, if true, ought

to banish stability from the system. The gentleman observes that there is a fallacy in my reasoning, and informs us that the legislatures of the States, not the people, are to appoint the senators. Does he reflect that they are the immediate agents of the people—that they are so constituted as to feel all their prejudices and passions, and to be governed, in a great degree, by their misapprehensions? Experience must have taught him the truth of this. Look through their history; what factions have arisen from the most trifling causes—what intrigues have been practised for the most illiberal purposes! Is not the State of Rhode Island at this moment struggling under difficulties and distresses, for having been led blindly by the spirit of the multitude? What is her legislature but the picture of a mob? In this State we have a senate possessed of the proper qualities of a permanent body; Virginia, Maryland, and a few other States are in the same situation; the rest are either governed by a single democratic assembly, or have a senate constituted entirely upon democratic principles. These have been, more or less, embroiled in factions, and have generally been the image and echo of the multitude. It is difficult to reason on this point without touching on certain delicate chords. I could refer you to periods and conjunctures when the people have been governed by improper passions and led by factious and designing men. I could show that the same passions have infected their representatives. Let us beware that we do not make the State legislatures a vehicle in which the evil humors may be conveyed into the national system. To prevent this, it is necessary that the Senate should be so formed as, in some measure, to check the State governments, and preclude the communication of the false impressions which they receive from the people. It has been often repeated, that the legislatures of the States can have only a partial and confined view of national affairs; that they can form no proper estimate of great objects which are not in the sphere of their interests. The observation of the gentleman, therefore, cannot take off the force of my argument.

Sir, the senators will constantly be attended with a reflection that their future existence is absolutely in the power of the States. Will not this form a powerful check? It is a reflection which applies closely to their feelings and interests, and no candid man, who thinks deliberately, will deny that it would be alone a sufficient check. The legislatures are to provide the mode of electing the President, and must have a great influence over the electors. Indeed, they convey their influence through a thousand channels into the general government. Gentlemen have endeavored to show that there will be no clashing of local and general interests; they do not seem to have sufficiently considered the subject. We have in this State a duty of six pence per pound on salt, and it operates lightly and with advantage; but such



a duty would be very burdensome to some of the States. If Congress should, at any time, find it convenient to impose a salt tax, would it not be opposed by the eastern States? Being themselves incapable of feeling the necessity of the measure, they could only feel its apparent injustice. Would it be wise to give the New England States a power to defeat this measure, by recalling their senators who may be engaged for it? I beg the gentlemen once more to attend to the distinction between the real and apparent interests of the States. I admit that the aggregate of individuals constitutes the government; yet every State is not the government; every petty district is not the government. Sir, in our State legislatures, a compromise is frequently necessary between the interests of counties; the same must happen in the general government between States. In this the few must yield to the many; or, in other words, the particular must be sacrificed to the general interest. If the members of Congress are too dependent on the State legislatures, they will be eternally forming secret combinations from local views. This is reasoning from the plainest principles. Their interest is interwoven with their dependence, and they will necessarily yield to the impression of their situation. Those who have been in Congress have seen these operations. The first question has been, How will such a measure affect my constituents, and consequently, how will the part I take affect my re-election? This consideration may be, in some degree, proper; but to be dependent from day to day, and to have the idea perpetually present, would be the source of innumerable evils. Six years, sir, is a period short enough for a proper degree of dependence. Let us consider the peculiar state of this body, and see under what impressions they will act. One third of them are to go out at the end of two years, two thirds in four years, and the whole in six years. When one year is elapsed there will be a number who are to hold their places for one year, others for three, and others for five years. Thus, there will not only be a constant and frequent change of members, but there will be some whose office is near the point of expiration, and who, from this circumstance, will have a lively sense of their dependence. The biennial change of members is an excellent invention for increasing the difficulty of combination. Any scheme of usurpation will lose, every two years, a number of its oldest advocates, and their places will be supplied by an equal number of new, unaccommodating, and virtuous men. When two principles are equally important, we ought, if possible, to reconcile them, and sacrifice neither. We think that safety and permanency in this government are completely reconcilable. The State governments will have, from the causes I have described, a sufficient influence over the Senate, without the check for which the gentlemen contend.

It has been remarked that there is an incon-

sistency in our admitting that the equal votes in the Senate were given to secure the rights of the States; and, at the same time, holding up the idea that their interests should be sacrificed to those of the Union. But the committee certainly perceive the distinction between the rights of the State and its interests. The rights of a State are defined by the constitution, and cannot be invaded without a violation of it; but the interests of a State have no connection with the constitution, and may be in a thousand instances constitutionally sacrificed. An uniform tax is perfectly constitutional, and yet it may operate oppressively upon certain members of the Union. The gentlemen are afraid that the State governments will be abolished. But, sir, their existence does not depend upon the laws of the United States. Congress can no more abolish the State governments than they can dissolve the Union. The whole constitution is repugnant to it, and yet the gentlemen would introduce an additional useless provision against it. It is proper that the influence of the States should prevail to a certain extent. But shall the individual States be the judges how far? Shall an unlimited power be left them to determine in their own favor? The gentlemen go into the extreme; instead of a wise government, they would form a fantastical Utopia. But, sir, while they give it a plausible, popular shape, they would render it impracticable. Much has been said about factions. As far as my observation has extended, factions in Congress have arisen from attachment to State prejudices. We are attempting by this constitution to abolish factions, and to unite all parties for the general welfare. That a man should have the power in private life of recalling his agent is proper, because, in the business in which he is engaged, he has no other object but to gain the approbation of his principal. Is this the case with the senator? Is he simply the agent of the State? No; he is an agent for the Union, and he is bound to perform services necessary to the good of the whole, though his State should condemn them.

Sir, in contending for a rotation, the gentlemen carry their zeal beyond all reasonable bounds. I am convinced that no government, founded on this feeble principle, can operate well. I believe also, that we shall be singular in this proposal. We have not felt the embarrassments resulting from rotation, that other States have; and we hardly know the strength of their objections to it. There is no probability that we shall ever persuade a majority of the States to agree to this amendment. The gentlemen deceive themselves. The amendment would defeat their own design. When a man knows he must quit his station, let his merit be what it may, he will turn his attention chiefly to his own emolument: nay, he will feel temptations, which few other situations furnish, to perpetuate his power by unconstitutional usurpations. Men will pursue their interests. It is as easy to change humar

nature as to oppose the strong current of the selfish passions. A wise legislator will gently divert the channel, and direct it, if possible, to the public good.

It has been observed that it is not possible there should be in a State only two men qualified for senators. But, sir, the question is not whether there may be no more than two men, but whether, in certain emergencies, you could find two equal to those whom the amendment would discard. Important negotiations, or other business to which they shall be most competent, may employ them at the moment of their removal. These things often happen. The difficulty of obtaining men capable of conducting the affairs of a nation in dangerous times, is much more serious than the gentlemen imagine.

As to corruption, sir, admitting in the President a disposition to corrupt, what are the instruments of bribery? It is said, he will have in his disposal a great number of offices. But how many offices are there, for which a man would relinquish the senatorial dignity? There may be some in the judicial, and some in other principal departments. But there are few, whose respectability can in any measure balance that of the office of senator. Men who have been in the Senate once, and who have a reasonable hope of a re-election, will not be easily bought by offices. This reasoning shows that a rotation would be productive of many disadvantages—under particular circumstances it might be extremely inconvenient, if not fatal to the prosperity of our country.

### THE FEDERAL CONSTITUTION.

Mr. Hamilton delivered the following speech, on the twenty-seventh of June, 1788, in opposition to a proposed amendment of the constitution which was brought before the New York Convention, the object of which was, to materially abridge the power proposed to be conferred upon Congress, relative to imposing excise and laying direct taxes:

This is one of those subjects, Mr. Chairman, on which objections very naturally arise, and assume the most plausible shape. Its address is to the passions, and its first impressions create a prejudice, before cool examination has an opportunity for exertion. It is more easy for the human mind to calculate the evils, than the advantages of a measure; and vastly more natural to apprehend the danger than to see the necessity of giving powers to our rulers. Hence, I may justly expect that those who hear me, will place less confidence in those arguments which oppose, than in those which favor their prepossessions.

After all our doubts, our suspicions and speculations, on the subject of government, we must return, at last, to this important truth—that when we have formed a constitution upon free principles; when we have given a proper balance to the different branches of administration, and fixed representation upon pure and equal principles, we may, with safety, furnish it with all the powers necessary to answer, in the most ample manner, the purposes of government. The great *desiderata* are a free representation, and mutual checks. When these are obtained, all our apprehensions of the extent of powers are unjust and imaginary. What then is the structure of this constitution? One branch of the legislature is to be elected by the people—by the same people who choose your

State representatives. Its members are to hold their office two years, and then return to their constituents. Here, sir, the people govern: here they act by their immediate representatives. You have also a Senate, constituted by your State legislatures—by men in whom you place the highest confidence, and forming another representative branch. Then, again, you have an executive magistrate, created by a form of election which merits universal admiration. In the form of this government, and in the mode of legislation, you find all the checks which the greatest politicians and the best writers have ever conceived. What more can reasonable men desire? Is there any one branch in which the whole legislative and executive powers are lodged? No. The legislative authority is lodged in three distinct branches, properly balanced: the executive authority is divided between two branches; and the judicial is still reserved for an independent body, who hold their offices during good behavior. This organization is so complex, so skilfully contrived, that it is next to impossible that an impolitic or wicked measure should pass the great scrutiny with success. Now, what do gentlemen mean by coming forward and declaiming against this government? Why do they say we ought to limit its powers, to disable it, and to destroy its capacity of blessing the people? Has philosophy suggested—has experience taught, that such a government ought not to be trusted with every thing necessary for the good of society? Sir, when you have divided and nicely balanced the departments of government; when you have strongly connected the virtue of your rulers with their interest; when, in short, you have rendered your system as perfect as human forms can be—you must place confidence; you must give power.

We have heard a great deal of the sword and

the purse: it is said, our liberties are in danger, if both are possessed by Congress. Let us see what is the true meaning of this maxim, which has been so much used, and so little understood. It is, that you shall not place these powers in either the legislative or executive singly: neither one nor the other shall have both; because this would destroy that division of powers, on which political liberty is founded, and would furnish one body with all the means of tyranny. But, where the purse is lodged in one branch, and the sword in another, there can be no danger. All governments have possessed these powers: they would be monsters without them, and incapable of exertion. What is your State government? Does not your legislature command what money it pleases? Does not your executive execute the laws without restraint? These distinctions between the purse and the sword have no application to the system, but only to its separate branches. Sir, when we reason about the great interests of a great people, it is high time that we dismiss our prejudices and banish declamation.

In order to induce us to consider the powers given by this constitution as dangerous—in order to render plausible an attempt to take away the life and spirit of the most important power in government, the gentleman complains that we shall not have a true and safe representation. I asked him what a safe representation was, and he has given no satisfactory answer. The assembly of New York has been mentioned as a proper standard; but, if we apply this standard to the general government, our Congress will become a mere mob, exposed to every irregular impulse, and subject to every breeze of faction. Can such a system afford security? Can you have confidence in such a body? The idea of taking the ratio of representation, in a small society, for the ratio of a great one, is a fallacy which ought to be exposed. It is impossible to ascertain to what point our representation will increase: it may vary from one, to two, three, or four hundred; it depends upon the progress of population. Suppose it to rest at two hundred; is not this number sufficient to secure it against corruption? Human nature must be a much more weak and despicable thing than I apprehend it to be, if two hundred of our fellow-citizens can be corrupted in two years. But, suppose they are corrupted; can they, in two years, accomplish their designs? Can they form a combination, and even lay a foundation for a system of tyranny, in so short a period? It is far from my intention to wound the feelings of any gentleman; but I must, in this most interesting discussion, speak of things as they are, and hold up opinions in the light in which they ought to appear: and I maintain, that all that has been said of corruption, of the purse and the sword, and of the danger of giving powers, is not supported by principle or fact: that it is mere verbiage and idle declamation. The true principle of government is this: make the system

complete in its structure; give a perfect proportion and balance to its parts; and the powers you give it will never affect your security. The question, then, of the division of powers between the general and State governments, is a question of convenience: it becomes a prudential inquiry, what powers are proper to be reserved to the latter; and this immediately involves another inquiry into the proper objects of the two governments. This is the criterion by which we shall determine the just distribution of powers.

The great leading objects of the federal government, in which revenue is concerned, are to maintain domestic peace, and provide for the common defence. In these are comprehended the regulation of commerce, that is, the whole system of foreign intercourse; the support of armies and navies, and of the civil administration. It is useless to go into detail. Every one knows that the objects of the general government are numerous, extensive and important. Every one must acknowledge the necessity of giving powers, in all respects, and in every degree, equal to these objects. This principle assented to, let us inquire what are the objects of the State governments. Have they to provide against foreign invasion? Have they to maintain fleets and armies? Have they any concern in the regulation of commerce, the procuring alliances, or forming treaties of peace? No. Their objects are merely civil and domestic; to support the legislative establishment, and to provide for the administration of the laws. Let any one compare the expense of supporting the civil list in a State, with the expense of providing for the defence of the Union. The difference is almost beyond calculation. The experience of Great Britain will throw some light on this subject. In that kingdom, the ordinary expenses of peace to those of war are as one to fourteen: but there they have a monarch, with his splendid court, and an enormous civil establishment, with which we have nothing in this country to compare. If, in Great Britain, the expenses of war and peace are so disproportioned, how wide will be their disparity in the United States; how infinitely wider between the general government and each individual State! Now, sir, where ought the great resources to be lodged? Every rational man will give an immediate answer. To what extent shall these resources be possessed? Reason says, as far as possible exigencies can require; that is, without limitation. A constitution cannot set bounds to a nation's wants; it ought not, therefore, to set bounds to its resources. Unexpected invasions, long and ruinous wars, may demand all the possible abilities of the country. Shall not your government have power to call these abilities into action? The contingencies of society are not reducible to calculations. They cannot be fixed or bounded, even in imagination. Will you limit the means of your defence, when you cannot ascertain the force or extent of the in-

vasion? Even in ordinary wars, a government is frequently obliged to call for supplies, to the temporary oppression of the people.

Sir, if we adopt the idea of exclusive revenues, we shall be obliged to fix some distinguished line, which neither government shall overpass. The inconveniences of this measure must appear evident, on the slightest examination. The resources appropriated to one, may diminish or fail, while those of the other may increase, beyond the wants of government. One may be destitute of revenues, while the other shall possess an unnecessary abundance, and the constitution will be an eternal barrier to a mutual intercourse and relief. In this case, will the individual States stand on so good a ground, as if the objects of taxation were left free and open to the embrace of both the governments? Possibly, in the advancement of commerce, the imposts may increase to such a degree, as to render direct taxes unnecessary. These resources, then, as the constitution stands, may be occasionally relinquished to the States; but on the gentleman's idea of prescribing exclusive limits, and precluding all reciprocal communication, this would be entirely improper. The laws of the States must not touch the appropriated resources of the United States, whatever may be their wants. Would it not be of more advantage to the States, to have a concurrent jurisdiction extending to all the sources of revenue, than to be confined to such a small resource, as, on calculation of the objects of the two governments, should appear to be their due proportion? Certainly you cannot hesitate on this question. The gentleman's plan would have a further ill effect; it would tend to dissolve the connexion and correspondence of the two governments, to estrange them from each other, and to destroy that mutual dependence which forms the essence of union. Sir, a number of arguments have been advanced by an honorable member from New York, which, to every unclouded mind, must carry conviction. He has stated, that in sudden emergencies, it may be necessary to borrow; and that it is impossible to borrow, unless you have funds to pledge for the payment of your debts. Limiting the powers of government to certain resources, is rendering the fund precarious; and obliging the government to ask, instead of empowering it to command, is to destroy all confidence and credit. If the power of taxing is restricted, the consequence is, that on the breaking out of a war, you must divert the funds appropriated to the payment of debts, to answer immediate exigencies. Thus you violate your engagements, at the very time you increase the burden of them. Besides, sound policy condemns the practice of accumulating debts. A government, to act with energy, should have the possession of all its revenues to answer present purposes. The principle for which I contend is recognized, in all its extent, by our old constitution. Congress is authorized to raise troops, to call for

supplies without limitation, and to borrow money to any amount. It is true, they must use the form of recommendations and requisitions: but the States are bound by the solemn ties of honor, of justice, of religion, to comply without reserve.

Mr. Chairman, it has been advanced as a principle, that no government but a despotism can exist in a very extensive country. This is a melancholy consideration indeed. If it were founded on truth, we ought to dismiss the idea of a republican government, even for the State of New York. This idea has been taken from a celebrated writer, who, by being misunderstood, has been the occasion of frequent fallacies in our reasoning on political subjects. But the position has been misapprehended, and its application is entirely false and unwarrantable. It relates only to democracies, where the whole body of the people meet to transact business, and where representation is unknown. Such were a number of ancient and some modern independent cities. Men who read without attention have taken these maxims respecting the extent of country, and contrary to their proper meaning, have applied them to republics in general. This application is wrong in respect to all representative governments, but especially in relation to a confederacy of States, in which the supreme legislature has only general powers, and the civil and domestic concerns of the people are regulated by the laws of the several States. This distinction being kept in view, all the difficulty will vanish, and we may easily conceive that the people of a large country may be represented as truly as those of a small one. An assembly constituted for general purposes may be fully competent to every federal regulation, without being too numerous for deliberate conduct. If the State governments were to be abolished, the question would wear a different face; but this idea is inadmissible. They are absolutely necessary to the system. Their existence must form a leading principle in the most perfect constitution we could form. I insist that it never can be the interest or desire of the national legislature to destroy the State governments. It can derive no advantage from such an event; but, on the contrary, would lose an indispensable support, a necessary aid in executing the laws and conveying the influence of government to the doors of the people. The Union is dependent on the will of the State governments for its chief magistrate and for its Senate. The blow aimed at the members must give a fatal wound to the head, and the destruction of the States must be at once a political suicide. Can the national government be guilty of this madness? What inducements, what temptations can they have? Will they attach new honors to their station—will they increase the national strength—will they multiply the national resources—will they make themselves more respectable in the view of foreign nations or of their fellow citizens, by robbing the States of their constitutions?

privileges? But imagine, for a moment, that a political frenzy should seize the government; suppose they should make the attempt; certainly, sir, it would be for ever impracticable. This has been sufficiently demonstrated by reason and experience. It has been proved that the members of republics have been and ever will be stronger than the head. Let us attend to one general historical example. In the ancient feudal governments of Europe there were, in the first place, a monarch; subordinate to him, a body of nobles; and subject to these, the vassals, or the whole body of the people. The authority of the kings was limited, and that of the barons considerably independent. A great part of the early wars in Europe were contests between the king and his nobility. In these contests the latter possessed many advantages derived from their influence and the immediate command they had over the people, and they generally prevailed. The history of the feudal wars exhibits little more than a series of successful encroachments on the prerogatives of monarchy. Here, sir, is one great proof of the superiority which the members in limited governments possess over their head. As long as the barons enjoyed the confidence and attachment of the people, they had the strength of the country on their side, and were irresistible. I may be told that in some instances the barons were overcome; but how did this happen? Sir, they took advantage of the depression of the royal authority, and the establishment of their own power, to oppress and tyrannize over their vassals. As commerce enlarged, and as wealth and civilization increased, the people began to feel their own weight and consequence; they grew tired of their oppressions, united their strength with that of the prince, and threw off the yoke of aristocracy. These very instances prove what I contend for. They prove that in whatever direction the popular weight leans, the current of power will flow; wherever the popular attachments lie, there will rest the political superiority. Sir, can it be supposed that the State governments will become the oppressors of the people? Will they forfeit their affections? Will they combine to destroy the liberties and happiness of their fellow citizens for the sole purpose of involving themselves in ruin? God forbid! The idea, sir, is shocking! It outrages every feeling of humanity and every dictate of common sense?

There are certain social principles in human nature, from which we may draw the most solid conclusions, with respect to the conduct of individuals and of communities. We love our families more than our neighbors; we love our neighbors more than our countrymen in general. The human affections, like the solar heat, lose their intensity as they depart from the centre, and become languid in proportion to the expansion of the circle on which they act. On these principles the attachment of the individual will be first and for ever secured by

the State governments; they will be a mutual protection and support. Another source of influence which has already been pointed out is the various official connections in the States. Gentlemen endeavor to evade the force of this by saying that these offices will be insignificant. This is by no means true. The State officers will ever be important, because they are necessary and useful. Their powers are such as are extremely interesting to the people; such as affect their property, their liberty, and life. What is more important than the administration of justice and the execution of the civil and criminal laws? Can the State governments become insignificant while they have the power of raising money independently and without control? If they are really useful, if they are calculated to promote the essential interests of the people, they must have their confidence and support. The States can never lose their powers till the whole people of America are robbed of their liberties. These must go together; they must support each other or meet one common fate. On the gentlemen's principle, we may safely trust the State governments, though we have no means of resisting them; but we cannot confide in the national government, though we have an effectual constitutional guard against every encroachment. This is the essence of their argument, and it is false and fallacious beyond conception.

With regard to the jurisdiction of the two governments, I shall certainly admit that the constitution ought to be so formed as not to prevent the States from providing for their own existence; and I maintain that it is so formed, and that their power of providing for themselves is sufficiently established. This is conceded by one gentleman, and in the next breath the concession is retracted. He says Congress have but one exclusive right in taxation—that of duties on imports; certainly, then, their other powers are only concurrent. But to take off the force of this obvious conclusion, he immediately says that the laws of the United States are supreme, and that where there is one supreme there cannot be a concurrent authority; and further, that where the laws of the Union are supreme, those of the States must be subordinate, because there cannot be two supremes. This is curious sophistry. That two supreme powers cannot act together is false. They are inconsistent only when they are aimed at each other, or at one indivisible object. The laws of the United States are supreme as to all their proper constitutional objects; the laws of the States are supreme in the same way. These supreme laws may act on different objects without clashing, or they may operate on different parts of the same common object with perfect harmony. Suppose both governments should lay a tax of a penny on a certain article; has not each an independent and uncontrollable power to collect its own tax? The meaning of the maxim, there cannot be two supremes, is simply this.

two powers cannot be supreme over each other. This meaning is entirely perverted by the gentlemen. But, it is said, disputes between collectors are to be referred to the federal courts. This is again wandering in the field of conjecture. But suppose the fact certain; is it not to be presumed that they will express the true meaning of the constitution and the laws? Will they not be bound to consider this concurrent jurisdiction—to declare that both the taxes shall have equal operation—that both the powers, in that respect, are sovereign and co-extensive? If they transgress their duty we are to hope that they will be punished. Sir, we can reason from probabilities alone. When we leave common sense and give ourselves up to conjecture, there can be no certainty, no security in our reasonings.

I imagine I have stated to the committee abundant reasons to prove the entire safety of the State governments and of the people. I would go into a more minute consideration of the nature of the concurrent jurisdiction and the operation of the laws in relation to revenue, but at present I feel too much indisposed to proceed. I shall, with the leave of the committee, improve another opportunity of expressing to them more fully my ideas on this point. I wish the committee to remember that the constitution under examination is framed upon truly republican principles, and that, as it is expressly designed to provide for the common protection and the general welfare of the United States, it must be utterly repugnant to this constitution to subvert the State governments or oppress the people.

#### SPEECH IN THE CASE OF HARRY CROSWELL.

This speech in the celebrated cause of the People against Harry Crosswell, on an indictment for libel on Thomas Jefferson, President of the United States, was delivered before the Supreme Court of the State of New York, in the year 1804, by Mr. Hamilton, for the defendant, on a motion for a new trial.\*

MAY IT PLEASE THE COURT: In rising to address your honors at so late a period of the day, and after your attention has been so much fatigued, and the cause has been so ably handled, I may say, so exhausted, I feel a degree of embarrassment which it is with difficulty I can surmount. I fear lest it should not be possible for me to interest the attention of the court on the subject on which I have to speak. Nevertheless, I have a duty to perform, of which I cannot acquit myself, but by its execution. I have, however, this consolation, that, though I may fail in the attempt, I shall be justified by the importance of the question. I feel that it is of the utmost magnitude; of the highest importance viewed in every light. First, as it regards the character of the head of our nation; for, if indeed the truth can be given in evidence, and that truth can, as stated in the indictment, be established, it will be a serious truth, the effect of which it will be impossible to foresee. It is important also as it regards the boundaries of power between the constituent parts of our constitutional tribunals, to which we are, for the law and the fact, to resort—our judges and our juries. It is important, as it regards settling the right principles that may be applied to the case, in giving to either the one or the other the authority des-

tined to it by the spirit and letter of our law. It is important on account of the influence it must have on the rights of our citizens. Viewing it, therefore, in these lights, I hope I shall, in the arduous attempt, be supported by its importance, and if any doubt hangs on the mind of the court, I shall, I trust, be able to satisfy them that a new trial ought to be had.

The question branches itself into two divisions. The first as to the truth—whether, under a general issue of not guilty, it ought to be given in evidence. The other, as to the power of the court—whether it has a right, exclusively, over the intent, or whether that and the law do not constitute one complicated fact, for the cognizance of the jury, under the direction of the judge. The last, I trust, can be made to appear, on the principles of our jurisprudence, as plainly as it is possible to evince any thing to a court; and that in fact, there are no precedents which embrace the doctrines of the other side, or rather that they are so diverse and contrariant that nothing can arise from them to make an application to this case.

After these preliminary observations, and before I advance to the full discussion of this question, it may be necessary for the safety and accuracy of investigation, a little to define what this liberty of the press is, for which we contend, and which the present doctrines of those opposed to us, are, in our opinions, calculated to destroy.

The liberty of the press consists, in my idea, in publishing the truth, from good motives and for justifiable ends, though it reflect on government, on magistrates, or individuals. If it be not allowed, it excludes the privilege of canvassing men, and our rulers. It is in vain to say, you may canvass measures. This is impossible without the right of looking to men.

\* See note at page 206.

To say that measures can be discussed, and that there shall be no bearing on those who are the authors of those measures, cannot be done. The very end and reason of discussion would be destroyed. Of what consequence to show its object? Why is it to be thus demonstrated, if not to show, too, who is the author? It is essential to say, not only that the measure is bad and deleterious, but to hold up to the people who is the author, that, in this our free and elective government, he may be removed from the seat of power. If this be not to be done, then in vain will the voice of the people be raised against the inroads of tyranny. For, let a party but get into power, they may go on from step to step, and, in spite of canvassing their measures, fix themselves firmly in their seats, especially as they are never to be reproached for what they have done. This abstract mode, in practice can never be carried into effect. But, if under the qualifications I have mentioned, the power be allowed, the liberty, for which I contend, will operate as a salutary check. In speaking thus for the freedom of the press, I do not say there ought to be an unbridled license; or that the characters of men who are good, will naturally tend eternally to support themselves. I do not stand here to say that no shackles are to be laid on this license.

I consider this spirit of abuse and calumny as the pest of society. I know the best of men are not exempt from the attacks of slander. Though it pleased God to bless us with the first of characters, and though it has pleased God to take him from us, and this band of calumniators, I say, that falsehood eternally repeated would have affected even his name. Drops of water, in long and continued succession, will wear out adamant. This, therefore, cannot be endured. It would be to put the best and the worst on the same level.

I contend for the liberty of publishing truth, with good motives and for justifiable ends, even though it reflect on government, magistrates or private persons. I contend for it under the restraint of our tribunals. When this is exceeded, let them interpose and punish. From this will follow none of those consequences so ably depicted. When, however, we do look at consequences, let me ask whether it is right that a permanent body of men, appointed by the executive, and, in some degree, always connected with it, should exclusively have the power of deciding on what shall constitute a libel on our rulers, or that they shall share it, united with a changeable body of men, chosen by the people? Let our juries still be selected, as they now are, by lot. But it cannot be denied, that every permanent body of men is, more or less, liable to be influenced by the spirit of the existing administration; that such a body may be liable to corruption, and that they may be inclined to lean over towards party modes. No man can think more highly of our judges, and I may say personally so of those who now pre-

side, than myself; but I must forget what human nature is, and what her history has taught us, that permanent bodies may be so corrupted, before I can venture to assert that it cannot be. As then it may be, I do not think it safe thus to compromise our independence. For though, as individuals, they may be interested in the general welfare, yet, if once they enter into the views of government, their power may be converted into the engine of oppression. It is in vain to say that allowing them this exclusive right to declare the law, on what the jury has found, can work no ill; for, by this privilege, they can assume and modify the fact, so as to make the most innocent publication libellous. It is therefore not a security to say, that this exclusive power will but follow the law. It must be with the jury to decide on the intent; they must in certain cases be permitted to judge of the law, and pronounce on the combined matter of law and of fact. Passages have been adduced from Lord Mansfield's declarations to show that judges cannot be under the influence of an administration. Yet still it would be contrary to our own experience, to say that they could not. I do not think that even as to our own country it may not be. There are always motives and reasons that may be held up. It is therefore still more necessary, here, to mingle this power, than in England. The person who appoints there, is hereditary. That person cannot alone attack the judiciary; he must be united with the two Houses of Lords and of Commons, in assailing the judges. But, with us, it is the vibration of party. As one side or the other prevails, so of that class and temperament will be the judges of their nomination. Ask any man, however ignorant of principles of government, who constitute the judicial? he will tell you the favorites of those at the head of affairs. According then to the theory of this, our free government, the independence of our judges is not so well secured as in England. We have here reasons for apprehension not applicable to them. We are not, however, to be now influenced by the preference to one side or the other. But of which side soever a man may be, it interests all, to have the question settled, and to uphold the power of the jury; consistently however with liberty, and also with legal and judicial principles, fairly and rightly understood. None of these impair that for which we contend—the right of publishing the truth, from good motives and justifiable ends, though it reflect on government, on magistrates, or individuals.\*

\* The indictment in this case charged that Harry Crosswell, late of the city of Hudson, in the county of Columbia, New York, printer, being a malicious and seditious man, of a depraved mind, and wicked and diabolical disposition; and also deceitfully, wickedly, and maliciously devising, contriving, and intending Thomas Jefferson, Esq., President of the United States of America, to detract from, scandalize, traduce, vilify, and to represent him, the said Thomas Jefferson, as unworthy of the confidence, respect, and attach

Some observations have, however, been made in opposition to these principles. It is said, that as no man rises at once high into office, every opportunity of canvassing his qualities and qualifications is afforded, without recourse to the press; that his first election ought to stamp the seal of merit on his name. This, however, is to forget how often the hypocrite goes from stage to stage of public fame, under false array, and how often, when men attain the last object of their wishes, they change from that which they seemed to be; that men, the most zealous reverers of the people's rights, have, when placed on the highest seat of power, become their most deadly oppressors. It becomes, therefore, necessary to observe the actual conduct of those who are thus raised up.

I have already shown, that though libelling shall continue to be a crime, it ought to be so only when under a restraint, in which the court and the jury shall co-operate. What is a libel that it should be otherwise? Why take it out of the rule that allows, in all criminal cases, when the issue is general, the jury to determine on the whole? What is then a libel to induce this? That great and venerable man, Lord Camden, already cited with so much

ment of the people of the said United States, and to alienate and withdraw from the said Thomas Jefferson, Esq., President as aforesaid, the obedience, fidelity, and allegiance of the citizens of the State of New York, and also of the said United States; and wickedly and seditiously to disturb the peace and tranquillity, as well of the people of the State of New York, as of the United States; and also to bring the said Thomas Jefferson, Esq. (as much as in him, the said Harry Crosswell, lay), into great hatred, contempt, and disgrace, not only with the people of the State of New York, and the said people of the United States of America, but also with the citizens and subjects of other nations; and for that purpose the said Harry Crosswell did, on the ninth of September, in the year of our Lord 1802, with force and arms, at the said city of Hudson, in the said county of Columbia, wickedly, maliciously, and seditiously print and publish, and cause and procure to be printed and published, a certain scandalous, malicious, and seditious libel, in a certain paper or publication entitled *The Wasp*; containing therein, among other things, certain scandalous, malicious, inflammatory, and seditious matters of and concerning the said Thomas Jefferson, Esq., then and yet being President of the United States of America; that is to say, in one part thereof according to the tenor and effect following, that is to say Jefferson (the said Thomas Jefferson, Esq., meaning) paid Callender (meaning one James Thompson Callender) for calling Washington (meaning George Washington, Esq., deceased, late President of the United States), a traitor, a robber, and a perjurer; for calling Adams, meaning John Adams, Esq., late President of the United States, a hoary-headed incendiary, and for most grossly slandering the private characters of men who he (meaning the said Thomas Jefferson) well knew to be virtuous, to the great scandal and infamy of the said Thomas Jefferson, Esq., in contempt of the people of the State of New York, in open violation of the laws of the said State, to the evil example of all others in like case offending, and against the peace of the people of the State of New York, and their dignity.

well-deserved eulogy, says that he has never yet been able to form a satisfactory definition. All essays made towards it, are neither accurate nor satisfactory; yet, such as they are, I shall cite them and animadvert.

Blackstone and Hawkins declare that it is any malicious defamation, with an intent to blacken the reputation of any one, dead or alive.

The criminal quality is its maliciousness. The next ingredient is, that it shall have an intent to defame. I ask, then, if the intent be not the very essence of the crime? It is admitted that the word falsity, when the proceedings are on the statute, must be proved to the jury, because it makes the offence. Why not then the malice, when, to constitute the crime, it must necessarily be implied? In reason there can be no difference.

A libel is, then, a complicated matter of fact and law, with certain things and circumstances to give them a character. If so, then the malice is to be proved. The tendency to provoke is its constituent. Must it not be shown how and in what manner? If this is not to be the case, must every one who does not panegyrize be said to be a libeller? Unless the court are disposed to go that extreme length, it is necessary that the malice and intent must be proved. To this, it is certain the definition of Lord Coke may, in some degree, be opposed. He does seem to superadd "the breach of the peace." Lord Coke, however, does not give this as a specific definition; and even then the defamatory writing, which he particularizes, includes the question both of intent and malice. The breach of the peace, therefore, is not made the sole, but only one of the qualities. The question is not on the breaking of the peace, but depends on time, manner and circumstances, which must ever be questions of fact for jury determination. I do not advocate breaking the peace: observations may be made on public men, which are calculated merely to excite the attention of the community to them; to make the people exercise their own functions, which may have no tendency to a breach of the peace, but only to inspection. For surely a man may go far in the way of reflecting on public characters, without the least design of exciting tumult. He may only have it in view, to rouse the nation to vigilance and a due exertion of their right to change their rulers. This, then, being a mere matter of opinion, can it be not a matter for them to judge of, to whom it is addressed? The court, to be sure, may, like a jury, and in common with them, have the legal power and moral discernment to determine on this; yet it does not arise out of the writing, but by adverting to the state of things and circumstances. It, therefore, answers no purpose to say it has a tendency to a breach of the peace.

Lord Loughborough, in the Parl. Chron. 644, 657, instances that passages from holy writ may be turned into libels.



Lord Thurlow admits that this may happen, and that time and circumstances may enter into the question. He, it is true, sanctioned the doctrines of our opponents, but allowed time and circumstances to be ingredients; and, strange to say, though these are extrinsic to the record, was of opinion for the old law. Lord Thurlow says, however, that it might be something more than a bare libel. Intimating here, that it may be even treason; and is it not, then, to confess that intent is a matter of fact? If so, who, or where shall be the forum but the jury?

My definition of a libel is, and I give it with all diffidence after the words of Lord Cambden, my definition, then, is this: I would call it a slanderous or ridiculous writing, picture or sign, with a malicious or mischievous design or intent, towards government, magistrates, or individuals. If this definition does not embrace all that may be so called, does it not cover enough for every beneficial purpose of justice? If it have a good intent, it ought not to be a libel, for it then is an innocent transaction; and it ought to have this intent, against which the jury have, in their discretion, to pronounce. It shows itself to us as a sentence of fact. Crime is a matter of fact by the code of our jurisprudence. In my opinion, every specific case is a matter of fact, for the law gives the definition. It is some act in violation of law. When we come to investigate, every crime includes an intent. Murder consists in killing a man with malice prepense. Manslaughter, in doing it without malice, and at the moment of an impulse of passion. Killing may even be justifiable, if not praiseworthy, as in defence of chastity about to be violated. In these cases the crime is defined, and the intent is always the necessary ingredient. The crime is matter of law, as far as definition is concerned; fact, as far as we are to determine its existence.

But it is said the judges have the right, on this fact, to infer the criminal intent, that being matter of law. This is true; but what do we mean by these words, unless the act dependent on, and united with its accessaries, such as the law has defined, and which when proved, constitute the crime? But whether the jury are to find it so, with all its qualities, is said to be a question; no act, separate from circumstances, can be criminal, for without these qualities it is not a crime. Thus, as I have before instanced, murder is characterized by being with malice prepense; manslaughter, by being involuntary; justifiable homicide, by having some excuse. Killing, therefore, is not a crime; but it becomes so in consequence of the circumstances annexed. In cases that are, in the general opinion of mankind, exceptions to the explanations I have given, the law contemplates the intent. In duelling, the malice is supposed, from the deliberate acts of reflecting, sending a challenge, and appointing the time and place of meeting. Here, it is true,

the law implies the intent; but then let it be remembered that it is in consequence of its having previously defined the act, and forbidden its commission. This too is on the principle of natural justice, that no man shall be the avenger of his own wrongs, especially by a deed, alike interdicted by the laws of God and of man. That, therefore, the intent shall in this case constitute the crime, is because the law has declared it shall be so. It is impossible to separate a crime from the intent. I call on those opposed to us to say what is a libel. To be sure they have told us that it is any scandalous publication, &c. which has a tendency to a breach of the peace. This, indeed, is a broad definition, which must, for the purposes of safety, be reduced to a positive fact, with a criminal intent. In this there is no violation of law; it is a settled maxim, that *mens facit reum; non reus, nisi sit mens rea*. When a man breaks into a house it is the intent that makes him a felon. It must be proved to the jury that it was his intention to steal: they are the judges of whether the intent was such, or whether it was innocent. Then so, I say, should it be here; let the jury determine, as they have the right to do, in all other cases, on the complicated circumstances of fact and intent. It may, as a general and universal rule, be asserted that the intention is never excluded in the consideration of the crime. The only case resorted to, and which is relied on by the opposite side, (for all the others are built upon it,) to show a contrary doctrine, was a star-chamber decision. To prove how plainly the intent goes to the constituting the crime of libel, the authority cited by the counsel associated with me, is fully in point. In that, the letter written to the father, though (as far as words were concerned) perfectly a libel, yet having been written for the purpose of reformation, and not with an intent to injure, was held not to amount to a libel. Suppose persons were suspected of forging public papers, and this communicated by letter to the Secretary of State, with a good design; still, if the doctrines contended for were to prevail, it would be libellous and punishable, though the party not only did it with the best of motives, but actually saved the State. In madness and idiocy, crimes may be perpetrated; nay, the same malicious intent may exist, but the crime does not. These things tend to show that the criminality of an act is a matter of fact and law combined, and on which it cannot belong to the exclusive jurisdiction of the court to decide the intent; for the question is for ever a question of fact.

The criminal intent, says Lord Mansfield, in the dean of St. Asaph's case, is what makes the crime.

Here that truly great man—for great he was, and no one more really estimates him than I do, yet he might have some biases on his mind not extremely favorable to liberty—here, then, he seems to favor the doctrine contended for;

but he will be found to be at times contradictory, nay, even opposed to himself. "A criminal intent in doing a thing in itself criminal, without a lawful excuse, is an inference of law." How can that be in itself criminal which admits of a lawful excuse? Homicide is not in itself a crime, therefore it is not correct to say a criminal intent can be inferred, because a lawful excuse may be set up. A thing cannot be criminal which has a lawful excuse, but as it may have a certain quality which constitutes the crime. To be sure, you may go on to say that where the intent bestows the character of criminality on an act indifferent, then it is a matter of fact, and not where the act is bad in itself. But this is begging the question. We contend that no act is criminal, abstracted and divested of its intent. Trespass is not in itself innocent. No man has a right to enter another's land or house. Yet it becomes in this latter case felony only in one point of view, and whether it shall be holden in that point is a subject of jury determination. Suppose a man should enter the apartments of the king; this, in itself, is harmless, but if he do it with an intent to assassinate, it is treason. To whom must this be made to appear in order to induce conviction? to the jury. Let it rather be said that crime depends on intent, and intent is one parcel of the fact. Unless, therefore, it can be shown that there is some specific character of libel that will apply in all cases, intent, tendency, and quality must all be matters of fact for a jury. There is, therefore, nothing which can be libel, independent of circumstances; nothing which can be so called in opposition to time and circumstances. Lord Loughborough, indeed, in the parliamentary debates on this very subject, to which I have referred the court, admits this to be the case. Lord Mansfield, embarrassed with the truth and strength of the doctrine, endeavors to contrast meaning with intent. He says that the truth may be given in evidence to show the meaning, but not the intent. If this can be done to show the application where the person is imperfectly described, why not to prove the intent, without which the crime cannot be committed? Whatever is done collaterally must show this, and in all cases collateral facts are for the jury. The intent here has been likened to the construction of a deed, or any written instrument, in all of which the intent is for the court. But the comparison will not hold; for even there the intent may be inquired of *aliunde*. When you go to qualify and explain, what is this but to decide on the intent by matters of fact? Lord Mansfield is driven into this contradiction when, on one occasion, he says it is a matter on which the jury may exercise their judgment, and in another, that it is not. I am free to confess, that in difficult cases, it is the duty of a jury to hearken to the directions of a judge with very great deference. But if the meaning must be either on the face of the libel or from any thing *aliunde*, then it must be a matter of

fact for the jury. That the *quo animo* affects the constitution of libel, cannot be disputed, and must be inquired of by some body. Now, unless this is to be tried by the jury, by whom is it to be determined? Will any man say, that in the case in the star chamber, respecting the letter written to the child's father, the intent was not the reason why it was held innocent, and the *quo animo* not gone into? Did they not then endeavor to prove the guilt by the intent? Now, if you are to show things malicious *aliunde*, you may defend by the same means. The *mens* is the question, and in common parlance it is that to which we resort to show guilt. 11 Mod. the Queen *vs.* Brown will explain how it is to be found. Nay, in this very case, when the counsel for the defendant objected to the attorney general's reading passages from the prospectus of the Wasp, and from other numbers, he expressly avowed that he thus acted in order that the jury might see it to be "manifest that the intent of the defendant was malicious." This, I here observe, is a mistake that law officers would not be very apt to slide into. Yet, on this very intent, this malicious intent thus proved to the jury, and on which they founded their verdict, is the court now asked to proceed to judgment. To demonstrate how fully this matter of intent is by our law a subject of jury determination, suppose the grand jury had, in the present case, returned to the bill *ignoramus*; on what would they have founded their return? Is not this, then, a precedent that the *quo animo* is for a jury? If it be necessary only to find the publication, why is not the grand jury competent for the whole? For if the supposition is that the grand jury may decide on the finding of the bill, surely the petit jury may acquit. If so, then is the case I have mentioned an important precedent. In *Rex vs. Horne*, an authority that has been justly urged, the principle is allowed. It appears there that the jury are to exercise their judgment from the nature of the act, what is its intent. Into a confession of this is Lord Mansfield himself driven. *Regina vs. Fuller*, we are told from the other side, was a case on the statute for *scandalum magnatum*. Of this, however, I can find no trace in the books, and there Lord Holt repeatedly interrogated as to the truth, would have allowed it to be given in evidence, and directed the jury that, if they did not believe the allegations false, they were not to find the defendant guilty. This, then, is a decision, as we contend, that not only the intent, but the truth is important to constitute the crime, and nothing has been shown against it. Nay, Lord Holt goes on still further; he bids the jury consider whether the papers have not a tendency to begot sedition, riot, and disturbance. Surely this authority of that great man demonstrates that intent and tendency are matters of fact for a jury. This argument will be further strengthened when I enumerate those cases where truth has been permitted to be shown. But before I

do that, I must examine how far truth is to be given in evidence. This depends on the intent's being a crime. Its being a truth is a reason to infer that there was no design to injure another. Thus, not to decide on it would be injustice, as it may be material in ascertaining the intent. It is impossible to say that to judge of the quality and nature of an act, the truth is immaterial. It is inherent in the nature of things, that the assertion of truth cannot be a crime. In all systems of law this is a general axiom, but this single instance, it is attempted to assert, creates an exception, and is therefore an anomaly. If, however, we go on to examine what may be the case that shall be so considered, we cannot find it to be this. If we advert to the Roman law, we shall find that Paulus and Peregrinus take a distinction between those truths which relate to private persons and those in which the public are interested. Vinnius lays it down in the doctrine cited by the associate counsel who last spoke. If, then, we are to consider this a doctrine to be adopted in all that relates to public men, it ought now to be received. When we advert to the statutes they confirm our positions. These statutes are indisputably declaratory of the early law. We know that a great part of the common law has been, for certainty, reduced to statutes. Can we suppose that the common law did not notice that no punishment was to be inflicted for speaking the truth, when we see a statute thus enacting?

Therefore, the fair reasoning is, that they are declaratory of the common law. That, by our code, falsehood must be the evidence of the libel. If we apply to precedents, they are decidedly for us. In the case cited from 7 D. and E. this is admitted, for there it is allowed that the word false is contained in all the ancient forms. This, then, is a strong argument for saying that the falsity was, by the common law, considered a necessary ingredient. It is no answer to say that in declarations for assault we use the words, "sticks, staves, &c." When instruments are named, this imports only one or the other which might be used; but when a word by way of epithet, that it means a precise idea, and we are to take it as if introduced for the purpose of explaining the crime. As to the practice on this occasion, we must take various epochs of the English history into consideration. At one time, that the law was as we have shown, is proved by the statutes. At that time the truth was clearly drawn into question, and that since the period of Lord Raymond a different practice has prevailed, is no argument against the common law. The authority from the third institute is conclusive, at least satisfactory, to show that it was then necessary to show the words were true. *Et quid, &c., quæ litera in se continet nullam veritatem ideo, &c.* It is to be supposed that the truth in this case was not inquired into, when the want of it is the reason of the judgment. Unless this had been gone into, the court would

not nor could not have spoken to it. The insertion of that, then, is a strong argument that this was the old law, and it shows us what that law was. In the case of the seven bishops, they were allowed to go into all the evidence they wanted. The court permitted them to read every thing to show it.

On that occasion Halloway and all agreed as to the admissibility of the truth. But this case is important in another view, as it shows the intent ought to be inquired into, for the bishops might have done it either with a seditious or an innocent motive. They declare that by the law they could not do the act required. They exculpated themselves by an appeal to their consciences. This shows the necessity of inquiring into the intent of the act.

In *Rex vs. Fuller*, this very atrocious offender was indicted for a most infamous libel, and yet Lord Holt at every breath asked him, Can you prove the truth? At the time, then, when this was done, there were some things in favor of the truth. It stands, then, a precedent for what we contend. I shall now notice some intermediate authorities between that day and those in which a contrary principle has been endeavored to be supported. It is true that the doctrine originated in one of the most oppressive institutions that ever existed; in a court where oppressions roused the people to demand its abolition, whose horrid judgments cannot be read without freezing the blood in one's veins. This is not used as declamation, but as argument. If doctrine tends to trample on the liberty of the press, and if we see it coming from a foul source, it is enough to warn us against polluting the stream of our own jurisprudence. It is not true that it was abolished merely for not using the intervention of juries, or because it proceeded *ex parte*; though that, God knows, would have been reason enough, or because its functions were discharged by the court of king's bench. It was because its decisions were cruel and tyrannical; because it bore down the liberties of the people, and inflicted the most sanguinary punishments. It is impossible to read its sentences without feeling indignation against it. This will prove why there should not be a paramount tribunal to judge of these matters.

Want's case is the first we find, on this subject: but even then we do not meet the broad definition of Lord Coke, in the case *de famosis libellis*. I do not deny this doctrine of the immateriality of the truth as a universal negative to a publication's being libellous, though true. But still I do say, that in no case may you not show the intent; for, whether the truth be a justification, will depend on the motives with which it was published.

Personal defects can be made public only to make a man disliked. Here then it will not be excused; it might, however, be given in evidence to show the libellous degree. Still, however, it is a subject of inquiry. There may be a fair and honest exposure. But if he uses the

weapon of truth wantonly; if for the purpose of disturbing the peace of families; if for relating that which does not appertain to official conduct, so far we say the doctrine of our opponents is correct. If their expressions are, that libellers may be punished though the matter contained in the libel be true, in these I agree. I confess that the truth is not material as a broad proposition respecting libels. But that the truth cannot be material in any respect, is contrary to the nature of things. No tribunal, no codes, no systems can repeal or impair this law of God, for by his eternal laws it is inherent in the nature of things. We first find this large and broad position to the contrary in 5 Rep. And here it is to be noticed, that when Lord Coke himself was in office, when he was attorney-general, and allowed to give his own opinion, he determines the truth to be material. But when he gets into that court, and on that bench which had pronounced against it, when he occupies a star-chamber seat, then he declares it is immaterial. I do not mention this as derogating from Lord Coke, for, to be sure, he may be said to have yielded; but this, I say, is the first case on this point in which he seems to be of a contrary opinion. We do not, in every respect, contend even against his last ideas, we only assert that the truth may be given in evidence. But this we allow is against the subsequent authorities, which, in this respect, overturn the former precedents. These latter, however, are contrary to the common law; to the principles of justice and of truth. The doctrine, that juries shall not judge on the whole matter of law and fact, or the intent and tendency of the publication, is not to be found in the cases before the time of Lord Raymond; and it is contrary to the spirit of our law, because it may prevent them from determining on what may, perhaps, be within their own knowledge. It was only by Lord Raymond that this was first set up and acted upon, and this has been followed by Lord Mansfield and his successors. Here, then, have been a series of precedents against us. Blackstone, too, says that the truth may not be given in evidence so as to justify; and so, with the qualifications I have before mentioned, do we. Prior, indeed, to his time, Lord Holt had laid down the law, in one or two cases, in conformity to that of the other side, and later times have given this a currency by a coincidence of precedents in its favor. A reflection may, perhaps, be here indulged, that, from what I have before remarked on Lord Coke, it is frequent for men to forget sound principles, and condemn the points for which they have contended. Of this, the very case of the seven bishops is an example, when those, who there maintained the principles for which we contend, supplanted the persons then in power, they were ready to go the whole length of the doctrine, that the truth could not be given in evidence on a libel. This is an admonition that ought at all times to be attended to; that at all

times men are disposed to forward principles to support themselves. The authority of Paley has been adduced, if indeed he may be called an authority. That moral philosopher considers every thing as slanderous libels, whether true or false, if published with motives of malice.

In these cases he does not consider the truth a justification. Nor do we; we do not say that it is, alone, always a justification of the act; and this we say, consistent with sound morality, is good law and good sense. On what ought a court to decide on such an occasion as this? Shall they be shackled by precedents, weakened in that very country where they were formed? Or rather, shall they not say, that we will trace the law up to its source? We consider, they might say, these precedents as only some extraneous bodies engrafted on the old trunk; and as such I believe they ought to be considered. I am inclined to think courts may go thus far, for it is absolutely essential to right and security that the truth should be admitted. To be sure, this may lead to the purposes suggested. But my reply is, that government is to be thus treated, if it furnish reasons for calumny. I affirm, that in the general course of things, the disclosure of truth is right and prudent, when liable to the checks I have been willing it should receive as an object of animadversion.

It cannot be dangerous to government, though it may work partial difficulties. If it be not allowed, they will stand liable to encroachments on their rights. It is evident, that if you cannot apply this mitigated doctrine, for which I speak, to the cases of libels here, you must for ever remain ignorant of what your rulers do. I never can think this ought to be; I never did think the truth was a crime; I am glad the day is come in which it is to be decided, for my soul has ever abhorred the thought that a free man dared not speak the truth; I have for ever rejoiced when this question has been brought forward.

I come now to examine the second branch of this inquiry—the different provinces of the court and the jury. I will introduce this subject by observing, that the trial by jury has been considered, in the system of English jurisprudence, as the palladium of public and private liberty. In all the political disputes of that country, this has been deemed the barrier to secure the subjects from oppression. If, in that country, juries are to answer this end, if they are to protect from the weight of State prosecutions, they must have this power of judging of the intent, in order to perform their functions; they could not otherwise answer the ends of their institution. For, under this dangerous refinement of leaving them to decide only the fact of composing and publishing any thing on which they may decide, may be made a libel. I do not deny the well-known maxim, that to matters of fact, the jury, and to matters of law, the judges, shall answer. I do not

deny this, because it is not necessary for the purposes of this or any other case, that it should be denied. I say, with this complicated explanation, I have before given of the manner in which the intent is necessarily interwoven in the fact, the court has the general cognizance of the law. In all cases of ancient proceedings the question of law must have been presented.

It was in civil cases alone that an attaint would lie. They have, it is said, the power to decide in criminal, on the law and the fact. They have then the right, because they cannot be restricted in its exercise; and, in politics, power and right are equivalent. To prove it, what shall we say to this case? Suppose the legislature to have laid a tax, which, by the constitution, they certainly are entitled to impose, yet still the legislature may be guilty of oppression; but who can prevent them, or say they have not authority to raise taxes? Legal power, then, is the decisive effect of certain acts without control. It is agreed, that the jury may decide against the direction of the court, and that their verdict of acquittal cannot be impeached, but must have its effect. This, then, I take to be the criterion, that the constitution has lodged the power with them, and they have the right to exercise it. For this I could cite authorities. It is nothing to say, in opposition to this, that they, if they act wrong, are to answer between God and their consciences. This may be said of the legislature, and yet, nevertheless, they have the power and the right of taxation. I do not mean to admit, that it would be proper for jurors thus to conduct themselves, but only to show that the jury do possess the legal right of determining on the law and the fact. What, then, do I conceive to be true doctrine? That in the general distribution of power in our constitution, it is the province of the jury to speak to fact, yet, in criminal cases, the consequences and tendency of acts, the law and the fact are always blended. As far as the safety of the citizen is concerned, it is necessary that the jury shall be permitted to speak to both. How, then, does the question stand? Certainly not without hazard; because, inasmuch as in the general distribution of power, the jury are to be confined to fact, they ought not wantonly to depart from the advice of the court; they ought to receive it, if there be not strong and valid reasons to the contrary; if there be, they should reject. To go beyond this is to go too far. Because, it is to say, when they are obliged to decide, by their oath, according to the evidence, they are bound to follow the words of the judge. After they are satisfied, from him, what the law is, they have a right to apply the definition. It is convenient that it should be so. If they are convinced that the law is as stated, let them pronounce him guilty; but never let them leave that guilt for the judge; because, if they do, the victim may be offered up, and the defendant gone. Will any

one say, that under forms of law we may commit homicide? Will any directions from any judge excuse them? I am free to say, I would die on the rack, were I to sit as a juror, rather than confirm such a doctrine, by condemning the man I thought deserved to be acquitted; and yet I would respect the opinion of the judge, from which, however, I should deem myself at liberty to depart, and this I believe to be the theory of our law.

These are the propositions I shall endeavor to maintain. I have little more to do than examine how far precedents accord with principles, and whether any establish a contrary doctrine. I do not know that it is necessary to do more than has already been done by my associate counsel, and yet, perhaps, I should not complete my duty without adverting to what has fallen, on this point, from our opponents. There is not one of the ancient precedents in which our doctrine has not in general prevailed, and it is, indeed, to be traced down to one of a modern date. The case of the seven bishops is that to which I allude. There it was permitted to go into the truth, and all the court submitted the question to the jury. This case deserves particular attention. If, on the one hand, it was decided at a time when the nation was considerably agitated, it was, on the other hand, at a time when great constitutional precedents and points were discussed and resolved. The great one was, the power of the jury; and this power was submitted to, to extricate the people, for the salvation of the nation, from the tyranny with which they were then oppressed. This was one of the reasons which brought about their glorious revolution, and which, perhaps, tended to the maturing those principles which have given us ours. This ought to be considered as a landmark to our liberties, as a pillar which points out to us on what the principles of our liberty ought to rest; particularly so if we examine it as to its nature, and the nature of the attempts then made to set up and support the endeavors to construe an act of duty a libel—a deed in which conscience did not permit those reverend characters to act in any other way than what they did, a respect to which they held a bounden duty. It is a precedent then on which we should in every way fasten ourselves. The case of Fuller is of minor importance. Yet that is one in which Lord Holt called on the defendant to enter into the truth. In the King *vs.* Tutchin, Lord Holt expressly tells the jury, you are to consider whether the tendency of this writing be not to criminate the administration; you, the jury, are to decide on this. Owen's case is to the same effect. There Lord Cambden was of counsel, and in the discussion, in the House of Lords, he tells us, and surely his testimony is good, that being of counsel for the defendant, he was permitted to urge to the jury a cognizance of the whole matter of libel: that in the case of Shepherd, where, by his official situation, he was called on to prosecute for

the Crown, where the interests of government called on him to maintain an opposite doctrine, yet then he insisted for a verdict on the whole matter, from the consideration of the jury. In the *King vs. Horne*, Lord Mansfield himself tells the jury they have a right to exercise their judgment from the nature of the intent. This surely, then, is a precedent down to a late period. It is not, however, to be denied, that there is a series of precedents on the other side. But as far as precedents of this kind can be supported, they can rest on precedents alone, for the fundamental rights of juries show, that as by their power they can affect a question of this nature, so, politically speaking, they have the right. To ascertain this, it is necessary to inquire, whether this law, now contended for, uniformly and invariably formed the practice of all the judges in Westminster Hall. For, if so, then an argument may, with more propriety, be raised; but if it was disputed, then it is to be doubted. Precedents ought to be such as are universally acknowledged, and this, if we are to credit the highest authority, was not the invariable practice. Lord Loughborough says, that his practice was the other way. He declares that he invariably left the whole to the jury; and Lord Camden gives us to understand the same thing. Here, then, is proof that it was not universally acquiesced in, and this, by some of the most respected characters that ever sat on a bench. Can we call this a settled practice—a practice which is contradicted by other precedents? Have they not varied? I consider nothing but a uniform course of precedents, so established that the judges invariably conform to it in their judicial conduct, as forming a precedent. When this is not the case, we must examine the precedent, and see how far it is conformable to principles of general law. If, then, they have not that character of uniformity, which gives force to precedents, they are not to be regarded, for they are too much opposed to fundamental principles. The court may, therefore, disregard them, and say the law was never thus settled. It was a mere floating of litigated questions. Different conduct was pursued by different men, and, therefore, the court is at liberty to examine the propriety of all; and if it be convenient that a contrary mode should be adopted, we ought to examine into what has been done, for we have a right so to do, and it is our sacred duty. When we pass from this to the declaratory law of Great Britain, the whole argument is enforced by one of the first authority. I do not consider it as binding, but as an evidence of the common law. If so, I see not why we may not now hold it as evidence of another evidence, that the law had not been settled by a regular course of judicial precedents. On all the debates on this question, it is denied to have been so settled. It must then be confessed that it was so; the law was one thing, and the practice another; that to put it out of doubt, was the end and object

of Mr. Fox's bill. Therefore, it is in evidence that the law was not settled in that country. I notice another fact, or historical evidence of this; it is what was mentioned by Lord Lansdowne, in the very debates to which I have before alluded. It is, that twenty years before, a similar act was brought forward and dropped. Here then is a matter of fact, to show that, in the consideration of that nation, the doctrines of Lord Mansfield were never palatable nor settled, and that the opinions of judges and lawyers, were considered by many, as not the law of the land. Let it be recollected, too, that with that nation the administration of justice, in the last resort, is in the House of Lords. That being so, it gives extreme weight to a declaratory act, as it shows the sense of the highest branch of the judicature of that country. It is in evidence that what we contend for was, and had been the law, and never was otherwise settled. It is a very honorable thing to that country, in a case where party passions had been excited to a very great height, to see that all united to bring it in. It was first introduced by Mr. Fox; the principal officers of the Crown acquiesced; the prime minister gave it his support, and in this they were aided by many of the great law lords. All parties concurred in declaring the principles of that act to be the law; and not only does the form prove it to be declaratory, but when the court read the debates on that subject, they will see this to be the fact. Adding the word enacted to a bill, does not vary the conclusion of its being declaratory. The word enacted is commonly superadded, but the word declared, is never used but when it is intended that the act shall be considered as declaratory; and, when they insert the word declare, it is because they deem it important that it should be so understood. This I deem conclusive evidence of the intent. Thus also it was understood by all the judges, except Lord Kenyon, and he does not say that it was not declaratory. To be sure he makes use of some expressions that look that way; such as, "that the act had varied the old law." But not one word to show that it was not intended, by Parliament, to be a declaratory law. But it would not be surprising that Lord Kenyon, who opposed the passage of the act, should, in a judicial decision, still adhere to his old ideas. This, however, does not affect the evidence which arises from the words of the act. I join in issue, then, whether this be sufficient evidence to the court. For I contend, that notwithstanding the authority of Lord Kenyon, and the cases on the other side, the conclusions they maintain would be unfair. For, if these conclusions necessarily tend to the subversion of fundamental principles, though they be warranted by precedents, still the precedents ought not to weigh. But should they have settled the law by their precedents, still this court will admit any evidence to show that the facts are otherwise, and the law never was as they have settled it. In this case then, I

say, as matters of evidence, these precedents shall not prevail, and shall not have any effect. In practice, on this declaratory act, they have gone into a construction important to our argument. But, previously to entering into this, I shall make one observation to show the nature of this act to be declaratory; the recital states it to be so.

*Spencer, Attorney General.*—The whole matter in issue are the words.

*Hamilton.*—Is it to be doubted that every general issue includes law and fact? Not a case in our criminal code in which it is otherwise. The construction, the publication, the meaning of the innuendoes, the intent and design, are all involved in the question of libel, and to be decided on the plea of not guilty, which puts the whole matter in issue. It is, therefore, a subtlety to say that the fact and law are not in issue. There can be no distinction taken, even by judges, between libels and other points. But will it be said, that when this question was before the parliament, whether the law and fact should be in issue, that the parliament did not mean to give the power to decide on both? It is a mere cavil to say that the act did not mean to decide on this very point. The opposition of the twelve judges has been much insisted on. But in my opinion they have given up the point as to the right of the jury to decide on the intent. They in some part of their answer assert the exclusive power of the court; they deny in terms the power of the jury to decide on the whole. But when pressed on this point as to a letter of a treasonable nature, how do they conclude? Why, the very reverse of all this. Here, then, we see the hardship into which the best of men are driven, when compelled to support a paradox. Can the jury do it with power, and without right? When we say of any forum that it can do and may hazard the doing a thing, we admit the legal power to do it. What is meant by the word hazard? If they choose to do it, they have then the legal right; for legal power includes the legal right. This is really only a question of words. But in the exercise of this right, moral ideas are no doubt to restrain; for the conscience ought to decide between the charge and the evidence which ought to prevail, one side or the other. The moment, however, that question as to the power is admitted, the whole argument is given up. I consider the judges driven to yield up, at the conclusion of their opinion, that point for which they had in the former parts contended. Thus, then, stands the matter, on English conduct and on English precedents. Let us see if any thing in the annals of America will further the argument. Zenger's case has been mentioned as an authority. A decision in a factious period, and reprobated at the very time. A single precedent never forms the law. If in England it was fluctuating in an English court, can a colonial judge, of a remote colony, ever settle it? He cannot fix in New York what was not fixed

in Great Britain. It was merely one more precedent to a certain course of practice. But because a colonial governor, exercising judicial power, subordinate to the judges of the mother country, decides in this way, can it be said that he can establish the law, and that he has, by a solitary precedent, fixed what his superior could not? The most solemn decisions of the court of king's bench are at one time made and at another time overruled. Why are our courts to be bound down by the weight of only one precedent? Is a precedent, like the laws of the Medes and Persians, never to be changed? This is to make a colonial precedent of more weight than is in England allowed to a precedent of Westminster Hall. To pursue the precedents more emphatically our own, let us advert to the sedition law, branded indeed with epithets the most odious, but which will one day be pronounced a valuable feature in our national character. In this we find not only the intent but the truth may be submitted to the jury, and that even in a justificatory manner. This, I affirm, was on common law principles. It would, however, be a long detail to investigate the applicability of the common law to the constitution of the United States. It is evident, however, that parts of it use a language which refers to former principles. The *habeas corpus* is mentioned, and as to treason, it adopts the very words of the common law. Not even the legislature of the Union can change it. Congress itself cannot make constructive or new treasons. Such is the general tenor of the constitution of the United States, that it evidently looks to antecedent law. What is, on this point, the great body of the common law? Natural law and natural reason applied to the purposes of society. What are the English courts now doing but adopting natural law?

What have the court done here? Applied moral law to constitutional principles, and thus the judges have confirmed this construction of the common law; and therefore, I say, by our constitution it is said the truth may be given in evidence. In vain is it to be replied that some committee met, and in their report gave it the name of amendment. For when the act says declared, I say the highest legislative body in this country have declared that the common law is, that the truth shall be given in evidence; and this I urge as a proof of what that common law is. On this point a fatal doctrine would be introduced, if we were to deny the common law to be in force according to our federal constitution. Some circumstances have doubtless weakened my position. Impeachments of an extraordinary nature have echoed through the land, charging as crimes things unknown; and although our judges, according to that constitution, must appeal to the definitions of the common law for treasons, crimes, and misdemeanors. This, no doubt, was that no vague words might be used. If, then, we discharge all evidence of the common law, they



may be pronounced guilty *ad libitum*; and the crime and offence being at once at their will, there would be an end of that constitution.

By analogy, a similar construction may be made of our own constitution, and our judges thus got rid of. This may be of the most dangerous consequences. It admonishes us to use with caution these arguments against the common law; to take care how we throw down this barrier, which may secure the men we have placed in power; to guard against a spirit of faction, that great bane to community, that mortal poison to our land. It is considered by all great men as the natural disease of our form of government, and therefore we ought to be careful to restrain that spirit. We have been careful that when one party comes in it shall not be able to break down and bear away the others. If this be not so, in vain have we made constitutions; for if it be not so, then we must go into anarchy, and from thence to despotism and to a master. Against this I know there is an almost insurmountable obstacle in the spirit of the people. They would not submit to be thus enslaved. Every tongue, every arm would be uplifted against it; they would resist, and resist, and resist, till they hurled from their seats those who dared make the attempt. To watch the progress of such endeavors is the office of a free press; to give us early alarm, and put us on our guard against the encroachments of power. This, then, is a right of the utmost importance; one for which, instead of yielding it up, we ought rather to spill our blood. Going on, however, to precedents, I find another in the words of Chief Justice Jay, when pronouncing the law on this subject. The jury are, in the passage already cited, told the law and the fact is for their determination; I find him telling them that it is their right. This admits of no qualification. The little, miserable conduct of the judge in Zenger's case, when set against this, will kick the beam; and it will be seen that even the twelve judges do not set up, with deference, however, to their known abilities, that system now insisted on. If the doctrine for which we contend is true in regard to treason and murder, it is equally true in respect to libel. For there is the great danger. Never can tyranny be introduced into this country by arms; these can never get rid of a popular spirit of inquiry; the only way to crush it down is by a servile tribunal. It is only by the abuse of the forms of justice that we can be enslaved. An army never can do it. For ages it can never be attempted. The spirit of the country, with arms in their hands, and disciplined as a militia, would render it impossible. Every pretence that liberty can be thus invaded is idle declamation. It is not to be endangered by a few thousands of miserable, pitiful military. It is not thus that the liberty of this country is to be destroyed. It is to be subverted only by a pretence of adhering to all the forms of law, and yet, by breaking down the substance of our liberties; by devoting a

wretched but honest man as the victim of a nominal trial. It is not by murder, by an open and public execution, that he would be taken off. The sight of this, of a fellow-citizen's blood, would at first beget sympathy; this would rouse into action, and the people, in the madness of their revenge, would break, on the heads of their oppressors, the chains they had destined for others.

One argument was stated to the court of a most technical and precise kind. It was that which relates to putting on the record a part only of the libel. That on this no writ of error would lie. What was the answer given? That it could not be presumed judges could be so unjust. Why, it requires neither prejudice nor injustice, it may be matter of opinion. The argument goes to assert that we are to take for granted the infallibility of our judges. The court must see that some better reason must be given; that it must be shown that this consequence cannot ensue. If not, it is decisive against the argument. Surely this question deserves a further investigation. Very truly and righteously was it once the intention of the attorney-general that the truth should have been given in evidence. It is desirable that there should be judicial grounds to send it back again to a jury. For surely it is not an immaterial thing that a high official character should be capable of saying any thing against the father of this country.

It is important to have it known to the men of our country, to us all, whether it be true or false; it is important to the reputation of him against whom the charge is made, that it should be examined. It will be a glorious triumph for truth; it will be happy to give it a fair chance of being brought forward; an opportunity, in case of another course of things, to say that the truth stands a chance of being the criterion of justice. Notwithstanding, however, the contrary is asserted to be the doctrine of the English courts, I am, I confess, happy to hear that the freedom of the English is allowed; that a nation with king, lords, and commons, can be free. I do not mean to enter into a comparison between the freedom of the two countries. But the attorney-general has taken vast pains to celebrate Lord Mansfield's character. Never, till now, did I hear that his reputation was high in republican estimation; never, till now, did I consider him as a model for republican imitation. I do not mean, however, to detract from the fame of that truly great man, but only conceived his sentiments were not those fit for a republic. No man more truly reveres his exalted fame than myself; if he had his faults, he had his virtues; and I would not only tread lightly on his ashes, but drop a tear as I passed by. He, indeed, seems to have been the parent of the doctrines on the other side. Such, however, we trust, will be proved not to be the doctrines of the common law nor of this country, and that in proof of this, a new trial will be granted.



## SPEECH ON THE REVENUE SYSTEM.

Prior to the establishment of the federal compact, the power of levying duties and imposts for the support of the general government, resided only in the legislative Assemblies of the several States. When it became necessary to meet the expenses and liquidate the debts incurred by the Union, the Congress had no greater power than that of issuing requisitions upon the State Assemblies. These requisitions, through the "neglect and misconduct of the State bodies," were ineffacious, and, in the language of Washington, were "little better than a jest and a byword throughout the land." In this state of affairs, Congress, to save the country from the ruin and disgrace which seemed to hang over it, proposed that the State legislatures should empower the Congress to lay an impost. The following speech on this important question was delivered by Mr. Hamilton, in the Assembly of New York, on the eighteenth of February, 1787:

There appears to me to have been some confusion in the manner of voting on the two preceding clauses of this bill; the first, for granting the impost to the United States, having been carried by a majority of one, and the last, for making the officers employed in the collection accountable to them, having been lost by a much larger majority. I was induced to hope, from the success of the first question, that the second would have met with equal success; as I presume gentlemen who meant to adhere to the act of the last session, would have opposed the whole of the present bill as unnecessary; and those who meant to depart from it, would be willing to agree substantially to the system recommended by Congress, as it had been adopted and modified by the other States generally. From the complexion of the votes on the last question, I am obliged to conclude, either that I was mistaken in my ideas of the intention of the committee, or that there is some misapprehension, in part, of the members.

It becomes, therefore, necessary—to obviate such misapprehension, if any exists, and to discharge my duty at all events—to lay the subject fully before the committee, and to detail, at large, my reasons for wishing to see the bill, in its present form, prevail.

It is a common practice, in entering upon the discussion of an important subject, to endeavor to conciliate the good will of the audience to the speaker, by professions of disinterestedness and zeal for the public good. The example, however frequent, I shall no further imitate than by making one or two general observa-

tions. If, in the public stations I have filled, I have acquitted myself with zeal, fidelity and disinterestedness; if, in the private walk of life, my conduct has been unstained by any dishonorable act, if it has been uniformly consistent with the rules of integrity, I have a right to the confidence of those to whom I address myself: they cannot refuse it to me without injustice. I am persuaded they will not refuse it to me. If, on the other hand, my public conduct has been in any instance marked with perfidy, duplicity, or with sinister views of any kind; if any imputations, founded in fact, can be adduced to the prejudice of my private character, I have no claim to the confidence of the committee; nor should I expect it.

Even these observations I should have spared myself, did I not know that, in the rage of party, gross calumnies have been propagated. Some I have traced and detected: there may still be others in secret circulation, with which I am unacquainted. Against the influence of such arts I can have no other shield than the general tenor of my past conduct. If *that* will protect me, I may safely confide in the candor of the committee. To that standard I cheerfully submit.

But, indeed, of what importance is it who is the speaker? 'tis his *reasons* only that concern the committee; if these are good, they owe it to themselves and to their constitution to allow them their full weight.

The first objection (and that which is supposed to have the greatest force) against the principles of the bill, is, that it would be unconstitutional to delegate legislative power to Congress. If this objection be founded in truth, there is at once an end of the inquiry. God forbid that we should violate that constitution which is the charter of our rights. But it is our duty to examine dispassionately whether it really stands in our way. If it does not, let us not erect an ideal barrier to a measure which the public good may require.

The first ground of the objection is deduced from that clause of the constitution which declares "that no power shall be exercised over the people of this State but such as is granted by or derived from them."

This, it is plain, amounts to nothing more than a declaration of that fundamental maxim of republican government, "that all power, mediately or immediately, is derived from the consent of the people," in opposition to those doctrines of despotism which uphold the divine right of kings, or lay the foundations of government in force, conquest, or necessity. It does not at all affect the question how far the legislature may go in granting power to the United States. A power conferred by the representatives of the people, if warranted by the

constitution under which they act, is a power derived from the people. This is not only a plain inference of reason, but the terms of the clause itself, seem to have been calculated to let in the principle. The words, "derived from," are added to the words "granted by," as if with design to distinguish an indirect derivation of power from an immediate grant of it. This explanation is even necessary to reconcile the constitution to itself, and to give effect to all its parts, as I hope fully to demonstrate in its proper place.

The next clause of the constitution relied upon, is that which declares that "the supreme legislative power *within this State* shall be vested in a Senate and Assembly." This, it is said, excludes the idea of any other legislative power operating within the State. But the more obvious construction of this clause, and *that* which best consists with the situation and views of the country at this time, with what has been done before and since the formation of our constitution, and with those parts of the constitution itself which acknowledge the federal government, is this—"In the distribution of the different parts of the sovereignty in the *particular* government of this State, the legislative authority shall reside in a Senate and Assembly," or in other words, "the legislative authority of the particular government of the State of New York shall be vested in a Senate and Assembly." The framers of the constitution could have had nothing more in view than to delineate the different departments of power in our own State government, and never could have intended to interfere with the formation of such a constitution for the Union as the safety of the whole might require. The justness of this construction will be further elucidated by that part of the constitution which prescribes that "the supreme executive authority of the *State* shall be vested in a governor." If the former clause excludes the grant of legislative power, this must equally exclude the grant of the executive power, and the consequence would be that there could be no federal government at all.

It will be of no avail to say, that there is a difference in the two cases in the mode of expression; that, in one, the terms of description are "within the State," in the other, "of the State." In grammar, or good sense, the difference in the phrases constitutes no substantial difference in the meaning, or if it does, it concludes against the objection; for the words, *within this State*, which are applied to the legislative power, have a certain precision that may be supposed to intend a distinction between that legislative power which is to operate *within this State* only, and that which is to operate upon this State in conjunction with the others. But I lay no stress on this observation. In my opinion, the legislative power "*within this State*" or the legislative power "of this State," amount in substance to the same thing, and therefore (as has been already

observed) if the constitution prohibits the delegation of legislative power to the Union, it equally prohibits the delegation of executive power—and the confederacy must then be at an end; for without legislative or executive power, it becomes a nullity.

Unfortunately for the objection, if it proves any thing it proves too much. It proves that the powers of the Union in their present form are an usurpation on the constitution of this State. This will appear not only from the reasoning adduced, but from this further consideration,—that the United States are already possessed of *legislative* as well as *executive* authority. The objects of executive power are of three kinds, to make treaties with foreign nations, to make war and peace, to execute and interpret the laws. This description of the executive power will enable us the more readily to distinguish the legislative; which in general may be defined the power of prescribing rules for the community.

The United States are authorized to require from the several States as much money as they judge necessary for the general purposes of the Union, and to limit the time within which it is to be raised: to call for such a number of troops as they deem requisite for the common defence in time of war—to establish rules in all cases of capture by sea or land—to regulate the alloy and value of coin, the standard of weights and measures, and to make all laws for the government of the army and navy of the Union. All these are powers of the legislative kind, and are declared by the confederation to be binding upon all the States.

The first is nothing less than a power of taxing the States in gross, though not in detail; and the last is the power of disposing of the liberty and lives of the citizens of this State, when in arms for the common defence. That the powers enumerated are all, or most of them, of a legislative nature, will not be denied by the law members on the other side of the question. If the constitution forbids the grant of legislative power to the Union, all those authorities are illegal and unconstitutional, and ought to be resumed.

If, on the contrary, those authorities were properly granted, then it follows that the constitution does not forbid the grant of legislative power, and the objection falls to the ground; for there is nothing in the constitution permitting the grant of one kind of legislative authority, and forbidding that of another. The degree or nature of the powers of legislation which it might be proper to confer upon the federal government, would in this case be a mere question of prudence and expediency, to be determined by general considerations of utility and safety.

The principle of the objection under consideration would not only subvert the foundation of the Union as now established—would not only render it impossible that any federal government could exist; but would defeat some of

the provisions of the constitution itself. This last idea deserves particular attention.

The nineteenth clause makes it the duty of the Governor "to correspond with the Continental Congress." The twentieth provides "that the judges and chancellor shall hold no other office than delegate to the GENERAL CONGRESS;" and the thirtieth directs "that delegates to represent this State in the General Congress of the United States of America shall be annually appointed."

Now, sir, I ask, if Congress were to have neither executive nor legislative authority, to what purpose were they to exist? To what purpose were delegates to be annually appointed to that body? To what purpose were these delegates to represent this State? Or how could they be said to represent it at all?

Is not the plain import of this part of the constitution, that they were to represent *this State* in the General Assembly of the UNITED STATES, for the purpose of managing the common concerns of the Union? And does not this necessarily imply that they were to be clothed with such powers as should be found essential to that object? Does it amount to a constitutional warrant to the legislature to confer those powers, of whatever kind they might be?

To answer these questions in the negative, would be to charge the constitution with the absurdity of proposing to itself an *end*, and yet prohibiting the means of accomplishing that end.

The words "to represent this State," are of great latitude, and are of themselves sufficient to convey any power necessary to the conduct and direction of its affairs in connection with the other parts of the confederacy.

In the interpretation of laws it is admitted to be a good rule to resort to the coexisting circumstances, and collect from thence the intention of the framers of the law. Let us apply this rule to the present case.

In the commencement of the Revolution, delegates were sent to meet in Congress with large discretionary powers. In short, generally speaking, with full power "to take care of the republic." In the whole of this transaction the idea of an UNION of the colonies was carefully held up. It pervaded all our public acts.

In the Declaration of Independence we find it continued and confirmed. That declaration, after setting forth its motives and causes, proceeds thus: "We, therefore, the representatives of the United States of America in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and indepen-

dent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things that independent States may of right do."

Hence we see that the UNION and INDEPENDENCE of these STATES are blended and incorporated in one and the same act; which, taken together, clearly imports that the United States had in their origin full power to do all acts and things which independent States may of right do; or, in other words, full power of sovereignty.

Accordingly, we find that upon the authority of that act only approved by the several States, they did levy war, contract alliances, and exercise other high powers of sovereignty, even to the appointment of a dictator, prior to the present confederation.

In this situation, and with this plenitude of power, our constitution knows and acknowledges the United States in Congress assembled, and provides for the annual appointment of delegates to represent this State in that body; which, in substance, amounts to a constitutional recognition of the UNION, with complete sovereignty.

A government may exist without any formal organization or precise definition of its powers. However improper it might have been, that the federal government should have continued to exist with such absolute and undefined authority, this does not militate against the position that it did possess such authority. It only proves the propriety of a more regular formation to ascertain its limits. This was the object of the present confederation, which is, in fact, an abridgment of the original sovereignty of the UNION.

It may be said, (for it has been said upon other occasions,) that, though the constitution did consider the United States in the light I have described, and left the legislature at liberty in the first instance to have organized the federal government in such a manner as they thought proper, yet that liberty ceased with the establishment of the present confederacy. The discretion of the legislature was then determined.

This, upon the face of it, is a subtilty, uncountenanced by a single principle of government, or a single expression of the constitution. It is saying that a general authority given to the legislature for the permanent preservation and good of the community, has been exhausted and spent by the exercise of a part of that authority. The position is the more destitute of color, because the confederation, by the express terms of the compact, preserves and continues this power. The last clause of it authorizes Congress to propose, and the States to agree to such alterations as might be afterwards found necessary or expedient.

We see, therefore, that the constitution knows and acknowledges the United States in Congress; that it provides for the annual appointment of delegates to represent *this State*

in that body, without prescribing the objects or limits of that representation; that at the time our constitution was framed, the Union existed with full sovereignty; and that therefore the idea of sovereignty in the Union is not incompatible with it. We see, further, that the doctrine contained in the objection against granting legislative power, would equally operate against granting executive power, would prove that the powers already vested in the Union are illegal and unconstitutional, would render a confederacy of the States in any form impracticable, and would defeat all those provisions of our own constitution which relate to the United States. I submit it to the committee, whether a doctrine pregnant with such consequences can be true; whether it is not as opposite to our constitution as to the principles of national safety and prosperity; and whether it would not be lamentable if the zeal of opposition to a particular measure should carry us to the extreme of imposing upon the constitution a sense foreign to it; which must embarrass the national councils upon future occasions, when all might agree in the utility and necessity of a different construction.

If the arguments I have used under this head are not well founded, let gentlemen *come forward and show their fallacy*. Let the subject have a fair and full examination, and let truth, on whatever side it may be, prevail!

Flattering myself it will appear to the committee that the constitution, at least, offers us no impediment, I shall proceed to other topics of objection. The next that presents itself, is a supposed danger to liberty from granting legislative power to Congress.

But, before I enter upon this subject, to remove the aspersions thrown upon that body, I shall give a short history of some material facts relating to the origin and progress of the business. To excite the jealousies of the people, it has been industriously represented as an undue attempt to acquire an increase of power. It has been forgotten, or intentionally overlooked, that, considering it in the strongest light as a proposal to alter the confederation, it is only exercising a power which the confederation has in direct terms reposed in Congress, who, as before observed, are, by the thirteenth article, expressly authorized to propose alterations.

But so far was the measure from originating in improper views of that body, that, if I am rightly informed, it did not originate there at all. It was first suggested by a convention of the four Eastern States, and New York, at Hartford, and, I believe, was proposed there by the deputies of this State. A gentleman on our bench, unconnected with Congress, who now hears me, (I mean Judge Hobart,) was one of them. It was dictated by a principle which *bitter experience then* taught us, and which, in peace or war, will always be found true—that adequate supplies to the federal treasury can never flow from any system which requires the

intervention of thirteen deliberatives *between the call and the execution*.

Congress agreed to the measure, and recommended it. This State complied without hesitation. All parts of the government—Senate, Assembly, and Council of Revision—concurred; neither the constitution nor the public liberty presented any obstacle. The difficulties from these sources are a recent discovery.

So late as the first session of the legislature, after the evacuation of this city, the governor of the State, in his speech to both Houses, gave a decided countenance to the measure. This he does, though not in express terms, yet by implications not to be misunderstood.

The *leading opponents* of the impost, of the present day, have all of them, at other times, either concurred in the measure, in its most exceptionable form, and without the qualifications annexed to it by the proposed bill, or have, by other instances of conduct, contradicted their own hypothesis on the constitution, which professedly forms the main prop of their opposition.

The honorable member in my eye (——), at the last session, brought in a bill for granting to the United States the power of regulating the trade of the Union. This surely includes more ample legislative authority than is comprehended in the mere power of levying a particular duty. It indeed goes to a prodigious extent, much further than, on a superficial view, can be imagined. Can we believe that the constitutional objection, if well founded, would so long have passed undiscovered and unnoticed? Or, is it fair to impute to Congress criminal motives for proposing a measure which was first recommended to them by five States, or from persisting in that measure, after the unequivocal experience they have had of the total inefficacy of the mode provided in the confederation for supplying the treasury of the Union?

I leave the answer to these questions to the good sense and candor of the committee, and shall return to the examination of the question, how far the power proposed to be conferred upon Congress would be dangerous to the liberty of the people. And here I ask—

Whence can this danger arise? The members of Congress are annually chosen by the members of the several legislatures. They come together with different habits, prejudices, and interests. They are, in fact, continually changing. How is it possible for a body so composed to be formidable to the liberties of States—several of which are large empires in themselves?

The subversion of the liberty of these States could not be the business of a day. It would at least require time, premeditation, and concert. Can it be supposed, that the members of a body so constituted, would be unanimous in a scheme of usurpation? If they were not, would it not be discovered and disclosed? If we could even suppose this unanimity among

one set of men, can we believe that all the new members who are yearly sent from one State or another, would instantly enter into the same views? Would there not be found one honest man to warn his country of the danger?

Suppose the worst—suppose the combination entered into and continued. The execution would at least announce the design; and the means of defence would be easy. Consider the separate power of several of these States, and the situation of all. Consider the extent, populousness, and resources of Massachusetts, Virginia, Pennsylvania; I might add, of New York, Connecticut, and other States. Where could Congress find means sufficient to subvert the government and liberties of either of these States? or, rather, where find means sufficient to effect the conquest at all? If an attempt was made upon one, the others, from a sense of common danger, would make common cause; and they could immediately unite and provide for their joint defence.

There is one consideration, of immense force in this question, not sufficiently attended to. It is this—that each State possesses in itself the full powers of government, and can at once, in a regular and constitutional way, take measures for the preservation of its rights. In a single kingdom or state, if the rulers attempt to establish a tyranny, the people can only defend themselves by a tumultuary insurrection; they must run to arms without concert or plan; while the usurpers, clothed with the forms of legal authority, can employ the forces of the state to suppress them in embryo, and before they can have time or opportunity to give system to their opposition. With us, the case is widely different. Each State has a government, completely organized in itself, and can at once enter into a regular plan of defence; with the forces of the community at its command, it can immediately form connections with its neighbors, or even with foreign powers, if necessary.

In a contest of this kind, the body of the people will always be on the side of the State governments. This will not only result from their love of liberty, and regard to their own safety, but from other strong principles of human nature. The State governments operate upon those immediate familiar personal concerns to which the sensibility of individuals is awake. The distribution of private justice belonging to them, they must always appear to the senses of the people as the immediate guardians of their rights. They will, of course, have the strongest hold on their attachment, respect, and obedience. Another circumstance will contribute to the same end: Far the greatest number of offices and employments are in the gift of the States separately; the weight of official influence will therefore be in favor of the State governments; and, with all these advantages, they cannot fail to carry the people along with them in every contest with the gen-

eral government in which they are not palpably in the wrong, and often when they are. What is to be feared from the efforts of Congress to establish a tyranny, with the great body of the people, under the direction of their State governments, combined in opposition to their views? Must not their attempts recoil upon themselves, and terminate in their own ruin and disgrace? or, rather, would not these considerations, if they were insensible to other motives, for ever restrain them from making such attempts?

The causes taken notice of, as securing the attachment of the people to their local governments, present us with another important truth—the natural imbecility of federal governments, and the danger that they will never be able to exercise power enough to manage the general affairs of the Union; though the States will have a common interest, yet they will also have a particular interest. For example: as a part of the Union, it will be the interest of every State to pay as little itself, and to let its neighbors pay as much, as possible. Particular interests have always more influence upon men than general. The federal States, therefore, consulting their immediate advantage, may be considered as so many eccentric powers, tending in a contrary direction to the government of the Union; and as they will generally carry the people along with them, the CONFEDERACY will be in continual danger of dissolution. This, Mr. Chairman, is the real rock upon which the happiness of this country is likely to split. This is the point to which our fears and cares should be directed—to guard against this, and not to terrify ourselves with imaginary dangers from the spectre of power in Congress, will be our true wisdom.

But let us examine a little more closely the measure under consideration. What does the bill before us require us to do? Merely to grant duties on imports to the United States, for the short period of twenty-five years; to be applied to the discharge of the principal and interest of the debts contracted for the support of the late war; the collection of which duties is to be made by officers appointed by the State, but accountable to Congress, according to such general regulations as the United States shall establish, subject to these important checks, that no citizen shall be carried out of the State for trial; that all prosecutions shall be in our own courts; that no excessive fines or penalties shall be imposed; and that a yearly account of the proceeds and application of the revenue shall be rendered to the legislature, on failure of which it reserves to itself a right of repealing its grant.

Is it possible for any measure to be better guarded? or is it possible that a grant for such precise objects, and with so many checks, can be dangerous to the public liberty?

Having now, as I trust, satisfactorily shown, that the constitution offers no obstacle to the measure; and that the liberty of the people

cannot be endangered by it, it remains only to consider it in the view of revenue.

The sole question left for discussion is, Whether it be an eligible mode of supplying the federal treasury or not?

The better to answer this question, it will be of use to examine how far the mode by quotas and requisitions has been found competent to the public exigencies.

The universal delinquency of the States during the war, shall be passed over with the bare mention of it. The public embarrassments were a plausible apology for that delinquency; and it was hoped the peace would have produced greater punctuality. The experiment has disappointed that hope, to a degree which confounds the least sanguine. A comparative view of the compliances of the several States, for the five last years, will furnish a striking result.

During that period, as appears by a statement on our files, New Hampshire, North Carolina, South Carolina, and Georgia, have paid nothing. I say nothing, because the only actual payment, is the trifling sum of about 7,000 dollars by New Hampshire. South Carolina indeed has credits, but these are merely by way of discount, on the supplies furnished by her during the war, in consideration of her peculiar sufferings and exertions while the immediate theatre of it.

Connecticut and Delaware have paid about one-third of their requisitions. Massachusetts, Rhode Island, and Maryland, about one-half; Virginia about three-fifths, Pennsylvania nearly the whole, and New York more than her quota.

These proportions are taken on the specie requisitions, the indents have been very partially paid, and in their present state are of little account.

The payments into the federal treasury have declined rapidly each year. The whole amount, for three years past, in specie, has not exceeded 1,400,000 dollars, of which New York has paid 100 per cent. more than her proportion. This sum, little more than 400,000 dollars a year, it will readily be conceived, has been exhausted in the support of the civil establishments of the Union, and the necessary guards and garrisons of public arsenals, and on the frontiers; without any surplus for paying any part of the debt, foreign or domestic, principal or interest.

Things are continually growing worse; the last year in particular produced less than two hundred thousand dollars, and that from only two or three States. Several of the States have been so long unaccustomed to pay, that they seem no longer concerned even about the appearances of compliance.

Connecticut and Jersey have almost formally declined paying any longer. The ostensible motive is the non-concurrence of this State in the impost system. The real one must be conjectured from the fact.

Pennsylvania, if I understand the scope of

some late resolutions, means to discount the interest she pays upon her assumption to her own citizens; in which case there will be little coming from her to the United States. This seems to be bringing matters to a crisis.

The pecuniary support of the federal government has of late devolved almost entirely upon Pennsylvania and New York. If Pennsylvania refuses to continue her aid, what will be the situation of New York? Are we willing to be the Atlas of the Union? or are we willing to see it perish?

This seems to be the alternative. Is there not a species of political knight-errantry in adhering pertinaciously to a system which throws the whole weight of the confederation upon this State, or upon one or two more? Is it not our interest, on mere calculations of State policy, to promote a measure, which, operating under the same regulations in every State, must produce an equal, or nearly equal, effect every where, and oblige all the States to share the common burthen?

If the impost is granted to the United States, with the power of levying it, it must have a proportionate effect in all the States, for the same mode of collection every where will have nearly the same return every where.

What must be the final issue of the present state of things? Will the few States that now contribute, be willing to contribute much longer? Shall we ourselves be long content with bearing the burthen singly? Will not our zeal for a particular system, soon give way to the pressure of so unequal a weight? And if all the States cease to pay, what is to become of the Union? It is sometimes asked, Why do not Congress oblige the States to do their duty? But where are the means? Where are the fleets and armies—where the federal treasury to support those fleets and armies, to enforce the requisitions of the Union? All methods short of coercion, have repeatedly been tried in vain.

Let us now proceed to another most important inquiry. How are we to pay our foreign debt? This, I think, is estimated at about 7,000,000 of dollars, which will every year increase with the accumulations of interest. If we pay neither principal nor interest, we not only abandon all pretensions to character as a nation, but we endanger the public peace. However it may be in our power to evade the just demands of our domestic creditors, our foreign creditors must and will be paid.

They have power to enforce their demands, and sooner or later they may be expected to do it. It is not my intention to endeavor to excite the apprehensions of the committee, but I would appeal to their prudence. A discreet attention to the consequences of national measures is no impeachment of our firmness.

The foreign debt, I say, must sooner or later be paid, and the longer provision is delayed, the heavier it must fall at last.

We require about 1,600,000 dollars to dis-

charge the interest and instalments of the present year, about a million annually upon an average, for ten years more, and about 300,000 dollars for another ten years.

The product of the impost may be computed at about a million of dollars annually. It is an increasing fund. This fund would not only suffice for the discharge of the foreign debt, but important operations might be 'grafted upon it towards the extinguishment of the domestic debt.

Is it possible to hesitate about the propriety of adopting a resource so easy in itself, and so extensive in its effects?

Here I expect I may be told there is no objection to employing this resource. The act of the last session does it. The only dispute is about the mode. We are willing to grant the *money*, but not the *power* required from us. Money will pay our debts; power may destroy our liberties.

It has been insinuated that nothing but a just of power would have prevented Congress from accepting the grant in the shape it has already passed the legislature. This is a severe charge. If true, it ought undoubtedly to prevent our going a step further. But it is easy to show that Congress could not have accepted our grant without removing themselves further from the object than they now are. To gain one State they must have lost all the others. The grants of every State are accompanied with a condition that similar grants be made by the other States. It is not denied that our act is essentially different from theirs. Their acts give the United States the power of collecting the duty; ours reserves it to the State, and makes it receivable in paper money.

The immediate consequences of accepting our grant would be a relinquishment of the grants of other States. They must take the matter up anew, and do the work over again to accommodate it to our standard. In order to anchor one State, would it have been wise to set twelve, or at least eleven others, afloat?

It is said, that the States which have granted more would certainly be willing to grant less. They would easily accommodate their acts to that of New York, as more favorable to their own power and security.

But would Massachusetts and Virginia, which have no paper money of their own, accede to a plan that permitted other States to pay in paper while they paid in specie? Would they consent that their citizens should pay *twenty* shillings in the pound, while the citizens of Rhode Island paid only *four*, the citizens of North Carolina *ten*, and of other States in different degrees of inequality, in proportion to the relative depreciation of their paper? Is it wise in this State to cherish a plan that gives such an advantage to the citizens of other States over its own?

The paper money of the State of New York, in most transactions, is equal to gold and silver; that of Rhode Island is depreciated to

five for one; that of North Carolina to two for one; that of South Carolina may perhaps be worth fifteen shillings in the pound.

If the States pay the duties in paper, is it not evident that for every pound of that duty consumed by the citizen of New York, he would pay twenty shillings, while the citizens of South Carolina would pay fifteen shillings; of North Carolina, ten shillings; and Rhode Island, only four!

This consideration alone is sufficient to condemn the plan of our grant of last session, and to prove incontestably that the States which are averse to emitting a paper currency, or have it in their power to support one when emitted, would never come into it.

Again, would those States which by their public acts demonstrate a conviction that the powers of the Union require augmentation; which are conscious of energy in their own administration—would they be willing to concur in a plan which left the collection of the duties in the hands of each State; and of course subject to all the inequalities which a more or less vigorous system of collection would produce?

This, too, is an idea which ought to have great weight with us. We have better habits of government than are to be found in some of the States; and our constitution admits of more energy than the constitution of most of the other States. The duties, therefore, would be more effectually collected with us than in such States, and this would have a similar effect to the depreciation of the money, in imposing a greater burthen on the citizens of this State.

If any State should incline to evade the payment of the duties, having the collection in its own hands, nothing would be easier than to effect it, and without materially sacrificing appearances.

It is manifest, from this view of the subject, that we have the strongest reasons, as a State, to depart from our own act; and that it would have been highly injudicious in Congress to have accepted it.

If there even had been a prospect of the concurrence of the other States in the plan, how inadequate would it have been to the public exigencies, fettered with the embarrassments of a depreciating paper!

It is to no purpose to say, that the faith of the State was pledged by the act to make the paper equal to gold and silver; and that the other States would be obliged to do the same. What greater dependence can be had on the faith of the States pledged to this measure, than on the faith they pledged in the confederation sanctioned by a solemn appeal to Heaven? If the obligation of faith in one case has had so little influence upon their conduct in respect to the requisitions of Congress, what hope can there be that they would have greater influences in respect to the deficiencies of the paper money?

There yet remains an important light in

which to consider the subject in the way of revenue. It is a clear point that we cannot carry the duties upon imports to the same extent by separate arrangements as by a general plan—we must regulate ourselves by what we find done in the neighboring States; while Pennsylvania has only two-and-a-half per cent. on her importations, we cannot greatly exceed her. To go much beyond it would injure our commerce in a variety of ways, and would defeat itself. While the ports of Connecticut and Jersey are open to the introduction of goods free from duty, and the conveyance from them to us is so easy—while they consider our imposts as an ungenerous advantage taken of them, which it would be laudable to elude, the duties must be light or they would be evaded. The facility to do it, and the temptation of doing it, would be both so great, that we should collect perhaps less by an increase of the rates than we do now. Already we experience the effects of this situation. But if the duties were to be levied under a common direction, with the same precautions every where to guard against smuggling, they might be carried without prejudice to trade to a much more considerable height.

As things now are, we must adhere to the present standard of duties, without any material alterations. Suppose this to produce fifty thousand pounds a year. The duties to be granted to Congress ought, in proportion, to produce double that sum. To this it appears, by a scheme now before us, that additional duties might be imposed for the use of the State, on certain enumerated articles, to the amount of thirty thousand pounds. This would be an augmentation of our national revenue by indirect taxation to the extent of eighty thousand pounds a year, an immense object in a single State, and which alone demonstrates the good policy of the measure.

It is no objection to say that a great part of this fund will be dedicated to the use of the United States. Their exigencies must be supplied in some way or other. The more is done towards it by means of the impost, the less will be to be done in other modes. If we do not employ that resource to the best account, we must find others in *direct* taxation. And to this are opposed all the habits and prejudices of the community. There is not a farmer in the State who would not pay a shilling in the voluntary consumption of articles on which a duty is paid, rather than a penny imposed immediately on his house and land.

There is but one objection to the measure under consideration that has come to my knowledge, which yet remains to be discussed. I mean the effect it is supposed to have upon our paper currency. It is said the diversion of this fund would leave the credit of the paper without any effectual support.

Though I should not be disposed to put a consideration of this kind in competition with the safety of the Union; yet I should be extremely

cautious about doing any thing that might affect the credit of our currency. The legislature having thought an emission of paper advisable, I consider it my duty as a representative of the people to take care of its credit. The farmers appeared willing to exchange their produce for it; the merchants, on the other hand, had large debts outstanding. They supposed that giving a free circulation to the paper would enable their customers in the country to pay, and as they perceived that they would have it in their power to convert the money into produce, they naturally resolved to give it their support.

These causes combined to introduce the money into general circulation, and having once obtained credit, it will now be able to support itself.

The chief difficulty to have been apprehended in respect to the paper, was to overcome the diffidence which the still recent experience of depreciating paper had instilled into men's minds. This, it was to have been feared, would have shaken its credit at its outset, and if it had once begun to sink, it would be no easy matter to prevent its total decline.

The event has, however, turned out otherwise, and the money has been fortunate enough to conciliate the general confidence. This point gained, there need be no apprehensions of its future fate, unless the government should do something to destroy that confidence.

The causes that first gave it credit still operate, and will in all probability continue so to do. The demand for money has not lessened, and the merchant has still the same inducement to countenance the circulation of the paper.

I shall not deny that the outlet which the payment of duties furnished to the merchant, was an additional motive to the reception of the paper. Nor is it proposed to take away this motive. There is now before the House a bill, one object of which is the establishment of a State impost on certain enumerated articles, in addition to that to be granted to the United States. It is computed on very good grounds, that the additional duties would amount to about £30,000, and as they would be payable in paper currency, they would create a sufficient demand upon the merchant to leave him, in this respect, substantially the same inducement which he had before. Indeed, independent of this, the readiness of the trading people to take the money can never be doubted, while it will freely command the commodities of the country; for this, to them, is the most important use they can make of it.

But besides the State impost, there must be other taxes; and these will all contribute to create a demand for the money, which is all we now mean when we talk of funds for its support; for there are none appropriated for the redemption of the paper.

Upon the whole, the additional duties will be a competent substitute for those now in existence; and the general good will of the com-



munity towards the paper, will be the best security for its credit.

Having now shown, Mr. Chairman, that there is no constitutional impediment to the adoption of the bill; that there is no danger to be apprehended to the public liberty from giving the power in question to the United States; that in the view of revenue the measure under consideration is not only expedient but necessary—let us turn our attention to the other side of this important subject. Let us ask ourselves, what will be the consequence of rejecting the bill? What will be the situation of our national affairs if they are left much longer to float in the chaos in which they are now involved?

Can our NATIONAL CHARACTER be preserved without paying our debts? Can the UNION subsist without revenue? Have we realized the consequences which would attend its dissolution?

If these States are not united under a FEDERAL GOVERNMENT, they will infallibly have wars with each other; and their divisions will subject them to all the mischiefs of foreign influence and intrigue. The human passions will never want objects of hostility. The Western Territory is an obvious and fruitful source of contest. Let us also cast our eye upon the map of this State, intersected from one extremity to the other by a large navigable river.

In the event of a rupture with them, what is to hinder our metropolis from becoming a prey to our neighbors? Is it even supposable that they would suffer it to remain the nursery of wealth to a distinct community?

These subjects are delicate, but it is necessary to contemplate them, to teach us to form a true estimate of our situation.

Wars with each other would beget standing armies—a source of more real danger to our liberties than all the powers that could be conferred upon the representatives of the Union. And wars with each other would lead to opposite alliances with foreign powers, and plunge us into all the labyrinths of European politics.

The Romans, in their progress to universal dominion, when they conceived the project of subduing the refractory spirit of the Grecian republics, which composed the famous Achaian League, began by sowing dissensions among them, and instilling jealousies of each other, and of the common head, and finished by making them a province of the Roman empire.

The application is easy: if there are any foreign enemies, if there are any domestic foes to this country, all their arts and artifices will be employed to effect a dissolution of the Union. This cannot be better done than by sowing jealousies of the federal head, and cultivating in each State an undue attachment to its own power.

## JOHN HANCOCK.

JOHN HANCOCK was born at Braintree, near the present village of Quincy, Massachusetts, on the twenty-third of January, 1737. His father, who bore the same name, was a clergyman of the strictest integrity and piety, and from his devotion to his theological duties and the elevation of his fellow-men, gained an eminent position in the affections of his people. This virtuous and benevolent man died in 1744, leaving his young son in the charge of a paternal relative, residing at Lexington. In this position he acquired the rudiments of an education, and early in 1745 entered the Boston Latin School, which was at that time under the charge of Master John Lovell.\* On graduating at Harvard College, in the summer of 1754, his uncle, Thomas Hancock, a merchant of great fortune and influence, took him under his patronage, and placed him in his counting-house, that he might add to his academic knowledge "a thorough understanding of the world of mercantile business." In 1760 he was sent to London, and sailed in company with Thomas Pownall, who, about that time, was recalled from the government of the colony of New Jersey. While in England he was present at the funeral of George II., and subsequently witnessed the coronation of his successor. Soon after his return to America, his uncle and patron died,† leaving him his immense estate, which at that time was the most considerable in the province. This sudden possession of wealth turned the eyes of the whole community towards him; his conduct under this trying prosperity secured universal esteem and good will. It made him neither giddy, arrogant, nor profligate; he continued his course of regularity, industry and moderation. Great numbers of people received employment at his hands, and in all his commercial transactions, he exhibited that fair and liberal character

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\* MASTER JOHN LOVELL was born at Boston, Massachusetts, on the 10th of June, 1710. He entered the public Latin school at the age of seven years, and graduated at Harvard College in 1728. The next year he became usher of the Latin school, and in 1734 was appointed its principal, which position he retained until the dispersion of the school, on the commencement of the siege of Boston, in April, 1775. He was a scholar of "ripe parts and a solid judgment," a severe disciplinarian, yet a gay, humorous, and agreeable companion. Among the numerous occasional pamphlets which appeared from his pen, was the oration pronounced on the 14th of March, 1742, on the death of Peter Faneuil, the liberal donor of the hall that now bears his name. This discourse was the first production, that afterward appeared in print, delivered in that hall. Master Lovell also contributed Nos. 2, 25, 26, and 27, to the *Pietas et Gratulatio Collegii Cantabrigiensis*, &c., which was published at Cambridge in 1761. Being an ardent loyalist, he sought the protection of the British, and accompanied them to Halifax, in 1776, where he remained in obscurity until his death, in 1778. His son, MASTER JAMES LOVELL, was an early and firm supporter of the rights of the colonies during the revolution, and for his patriotic zeal was confined in prison by General Gage, and subsequently carried as a prisoner to Halifax, where he met his "refugee father and tory." On his return to Boston he was elected to the Continental Congress, in which body he rendered the most eminent services. Before the establishment of the present constitution of Massachusetts, he was collector of the port of Boston, and afterwards was appointed naval officer of Boston and Charlestown, in which station he remained until his death, in July, 1814.—*Life of Arthur Lee: Allen's Biographical Dictionary.*

† The subjoined announcement of the death of this gentleman, appeared in the New York Mercury, of the thirteenth of August, 1764:

"Boston, August 6th.—Wednesday last, August 1st, about noon, the honorable THOMAS HANCOCK, Esq., one of his Majesty's Council for this province, was seized with an apoplexy, just as he was entering the Council Chamber, and expired about three o'clock, P. M., at his seat, to which he was carried soon after he was taken with the fit. He died in the 62d year of his age, and was one of the most noted merchants in New England. His remains are to be interred this afternoon, at half-past four."

The death of his widow is thus noticed in the Pennsylvania Evening Post, of May 7th, 1776: "*New Haven, May 1st.*—A few days since, died suddenly, in Fairfield, Conn., Mrs. ——— HANCOCK, relict of the late Hon. Thomas Hancock, of Boston."

which commonly distinguishes the extensive and affluent merchant.\* The natural influence which he acquired from his habits and his possessions, rendered him extremely popular, and he was often called upon to act in the affairs of the town.† In 1766, Hancock, with James Otis, Samuel Adams and Thomas Cushing, was elected to the General Assembly of his native province.‡ In this position he rendered signal services, and by the boldness of his patriotism, excited the esteem and admiration of his fellow-countrymen. He was placed on the most important committees, and generally occupied the chair in the deliberations of those bodies. At one time he was elected speaker of the Assembly, but the royal governor, who was jealous of the liberal principles he avowed, declined to acknowledge his appointment.

As Mr. Hancock became more deeply identified with the political concerns of the country, the enmity of the ministerial party towards him increased both in the Colonies and Great Britain. His ships were seized, and he was called upon to produce excessive bail. In the fall of the year 1768, the sloop *Liberty* arrived from Madeira, with a cargo of wines, and was unloaded in the night, without paying the duties imposed by the offensive acts of Parliament, which the patriots had determined to resist. For this opposition the vessel was seized by the officers of the customs, and carried under the guns of an armed ship that lay in the harbor. This measure so exasperated the people that they pursued the officers, and after driving them on board their vessels, seized the boat of the collector and burnt it; finally destroying the houses of some of the most prominent adherents of the ministry. Mr. Hancock being the owner of the vessel, was prosecuted and fined "ninety or a hundred thousand pounds sterling."§ To prevent a recurrence of similar scenes, the governor of the province introduced several regiments of royal troops into the town and quartered them upon the inhabitants. This measure irritated the colonists, and finally led to the affair of the evening of the fifth of March, 1770, known as the Boston massacre, in which a party of the soldiers killed a number of the citizens, who had collected to manifest their indignation against them. The day succeeding the massacre, a town meeting convened, and Mr. Hancock, with others, was appointed to request the governor to order the removal of the troops from the town. This the governor declined, on the plea of insufficient authority; but subsequently, through the instrumentality of Mr. Hancock, they were removed, and all further acts of violence prevented.

In 1774 Mr. Hancock delivered the oration commemorative of the massacre.|| This effort was spirited and pathetic. The younger Adams, who was present on the occasion, thus alludes to it in his diary: "The composition, the pronunciation, the action, all exceeded the expectation of every body. They exceeded even mine, which were very considerable. Many of the sentiments came with great propriety from him. His invective, particularly, against a preference

\* By the following advertisement, which may be found in the *Boston Evening Post*, of December 25th, 1764, the reader will ascertain the character of Mr. Hancock's commercial business:

"To be sold by John Hancock, at his store No. 4, at the east end of Faneuil Hall market, a general assortment of English and India goods; also choice Newcastle coals, and Irish butter, cheap for cash. Said Hancock desires those persons who are still indebted to the estate of the late Hon. Thomas Hancock, Esq., deceased, to be speedy in paying their respective balances, to prevent trouble. N. B.—In the Lydia, Capt. Scott, from London, came the following packages: L. W. No. 1, a trunk; No. 2, a small parcel. The owner, by applying to John Hancock, and paying freight, may have his goods."

† *Tudor's Life of James Otis*, page 262. *Hutchinson's History of Massachusetts Bay*, vol. 3, pp. 297–298.

‡ "At the time of this prosperity," says John Adams, "I was one day walking in the mall, and accidentally met Samuel Adams. In taking a few turns together, we came in full view of Mr. Hancock's house. Mr. Adams, pointing to the stone building, said, 'This town has done a wise thing to-day.' 'What?' 'They have made that young man's fortune their own.' His prophecy was literally fulfilled; for no man's property was ever more entirely devoted to the public. The town had that day chosen Mr. Hancock into the legislature of the province. The quivering anxiety of the public, under the fearful looking for of the vengeance of the king, ministry, and parliament, compelled him to a constant attendance in the House; his mind was soon engrossed by public cares, alarms, and terrors; his business was left to subalterns; his private affairs neglected, and continued to be so to the end of his life. If his fortune had not been very large, he must have died as poor as Mr. S. Adams or Mr. Gerry."—*John Adams to William Tudor, June 1st, 1817. Life and Works of John Adams*, vol. 10, page 260.

§ *Life and Works of John Adams*, vol. 2, page 215.

|| It is generally believed that this was the only rhetorical effort made by Mr. Hancock. There is in the Library of the New York Historical Society a very curious pamphlet, purporting to be a "Speech of his Excellency John Hancock, President of Congress at Philadelphia." It is in French, and bears the date of 1776. Its origin and history are not known to me, nor have I ever met with any notice of it elsewhere.

of riches to virtue, came from him with a singular dignity and grace." In the month of October of this year, Hancock was elected President of the Provincial Congress of Massachusetts, and in the following year succeeded Peyton Randolph in the presidency of the Continental Congress, which met at Philadelphia. He signed the Declaration of Independence, and the force with which he made that signature, shows "that it was never intended to be erased." Continuing in Congress until 1779, he resigned, on account of ill health, and returned to his home at Boston. In 1780 he was elected Governor of Massachusetts, and occupied the gubernatorial chair until 1785, when he was succeeded by Mr. Bowdoin, for two years. He was again elected governor in 1787, and continued in office during the remainder of his life. His exertions in favor of the adoption of the Federal Constitution in his native State, were untiring and effective. As chief magistrate of the State, he submitted the constitution to the legislature and urged the formation of the convention which met in January, 1788. It has been observed says Sullivan, that the adoption of this instrument in Massachusetts may have depended on Governor Hancock. He had been absent some days from illness. On resuming his place, he remarked on the difference of opinion which prevailed in the convention, as he had seen from the papers, and proposed that the constitution should be adopted; but that the adoption should be accompanied by certain amendments, to be submitted to Congress and to the States. He expressed his belief that it would be safe to adopt the constitution, under the expectation that the amendments would be ratified. The discussion appears then to have turned on the probability of obtaining such ratification. It cannot be assumed, for certainty, that this measure of Hancock's secured the adoption, but it is highly probable.\*

During the latter years of Governor Hancock's life, he was severely afflicted with the gout, and to a great degree unable to perform the duties of his station. On the eighth of October, 1793, he died, in the fifty-seventh year of his age. To record with precision the virtues of his mind, says a contemporary,—the philanthropy of his heart—his patriotism or his usefulness, were to insult the judgment of every American. If we ascend into the Senate of the Union, we there find his name *first* on that Magna Charta which ascertained, vindicated and declared the INDEPENDENCE of America—and the repeated suffrages of his fellow-citizens to sustain the office of chief magistrate of this commonwealth, show how highly he was esteemed as capable to guard their rights in the cabinet of Massachusetts. If we search our municipal records, we shall often see him sustaining with honor the most arduous and important stations. Look we into the temples of the Most High, we shall there view numerous marks of his charity and benevolence. But if we explore the hearts of the indigent and distressed—the widow and the orphan—we shall there see those lively emotions which emphatically say, *Our friend and our supporter is gone!* The pen of the ready writer will do honor to his services and to his memory; but the sorrow visible in the countenance of every description of citizens, is a better testimony to his exalted character than the sublimest effusions of the most polished writer.†

\* The convention may have been influenced by another circumstance. About this time a great meeting of mechanics was held at the Green Dragon tavern, situated in what is now part of Union Street, and westerly of the Baptist meeting-house. The tavern and the street were thronged. At this meeting resolutions were passed, with unanimity and acclamation, in favor of the adoption. But, notwithstanding Hancock's conciliatory proposal, and this expression of public feeling, the constitution was adopted by a small majority of *nineteen* out of three hundred and fifty-five votes.—*Sullivan's Familiar Letters on Public Characters*, pp. 64–65.

† This eulogium is taken from a "broadside" in the possession of the editor, containing an account of the "character and funeral procession of our late, excellent, and worthy GOVERNOR HANCOCK," published a short time after his decease.

## THE BOSTON MASSACRE.

This oration was delivered at Boston, Massachusetts, on the fifth of March, 1774, the anniversary of the "horrid massacre" which took place in the year 1770.\*

MEN, BRETHREN, FATHERS AND FELLOW-COUNTRYMEN: The attentive gravity, the venerable appearance of this crowded audience; the dignity which I behold in the countenances of so many in this great assembly; the solemnity of the occasion upon which we have met together, joined to a consideration of the part I am to take in the important business of this day, fill me with an awe hitherto unknown, and heighten the sense which I have ever had, of my unworthiness to fill this sacred desk. But, allured by the call of some of my respected fellow-citizens, with whose request it is always my greatest pleasure to comply, I almost forgot my want of ability to perform what they required. In this situation I find my only support in assuring myself that a generous people will not severely censure what they know was well intended, though its want of merit should prevent their being able to applaud it. And I pray that my sincere attachment to the interest of my country, and the hearty detestation of every design formed against her liberties, may be admitted as some apology for my appearance in this place.

I have always, from my earliest youth, rejoiced in the felicity of my fellow-men; and have ever considered it as the indispensable duty of every member of society to promote, as far as in him lies, the prosperity of every individual, but more especially of the community to which he belongs; and also, as a faithful subject of the State, to use his utmost endeavors to detect, and having detected, strenuously to oppose every traitorous plot which its enemies may devise for its destruction. Security to the persons and properties of the governed, is so obviously the design and end of civil government, that to attempt a logical proof of it, would be like burning tapers at noonday, to assist the sun in enlightening the world; and it cannot be either virtuous or honorable, to attempt to support a government of which this is not the great and principal basis; and it is to the last degree vicious and infamous to attempt to support a government which manifestly tends to render the persons and properties of the governed insecure. Some boast of being friends to government; I am a friend to righteous government, to a government founded upon the principles of reason and justice; but I glory in publicly avowing my eternal enmity to tyranny. Is the present system, which the British administration have adopted for the

government of the colonies, a righteous government—or is it tyranny? Here suffer me to ask, (and would to Heaven there could be an answer,) what tenderness, what regard, respect or consideration has Great Britain shown, in their late transactions, for the security of the persons or properties of the inhabitants of the colonies? Or rather what have they omitted, doing to destroy that security? They have declared that they have ever had, and of right ought ever to have, full power to make laws of sufficient validity to bind the colonies in all cases whatever. They have exercised this pretended right by imposing a tax upon us without our consent; and lest we should show some reluctance at parting with our property, her fleets and armies are sent to enforce their mad pretensions. The town of Boston, ever faithful to the British Crown, has been invested by a British fleet: the troops of George III. have crossed the wide Atlantic, not to engage an enemy, but to assist a band of traitors in trampling on the rights and liberties of his most loyal subjects in America—those rights and liberties which, as a father, he ought ever to regard, and as a king, he is bound, in honor, to defend from violation, even at the risk of his own life.

Let not the history of the illustrious house of Brunswick inform posterity, that a king, descended from that glorious monarch, George II., once sent his British subjects to conquer and enslave his subjects in America. But be perpetual infamy entailed upon that villain who dared to advise his master to such execrable measures; for it was easy to foresee the consequences which so naturally followed upon sending troops into America, to enforce obedience to acts of the British Parliament, which neither God nor man ever empowered them to make. It was reasonable to expect that troops, who knew the errand they were sent upon, would treat the people whom they were to subjugate, with a cruelty and haughtiness which too often buries the honorable character of a soldier in the disgraceful name of an unfeeling ruffian. The troops, upon their first arrival, took possession of our senate-house, and pointed their cannon against the judgment-hall, and even continued them there whilst the supreme court of judicature for this province was actually sitting to decide upon the lives and fortunes of the king's subjects. Our streets nightly resounded with the noise of riot and debauchery; our peaceful citizens were hourly exposed to shameful insults, and often felt the effects of their violence and outrage. But this was not all: as though they thought it not enough to violate our civil rights, they endeavored to deprive us of the enjoyment of our religious privileges to vitiate our morals, and thereby render us deserving of destruction.

\* See an account of this affair in the note at page 60.

Hence the rude din of arms which broke in upon your solemn devotions in your temples, on that day hallowed by Heaven, and set apart by God himself for his peculiar worship. Hence, impious oaths and blasphemies so often tortured your unaccustomed ear. Hence, all the arts which idleness and luxury could invent, were used to betray our youth of one sex into extravagance and effeminacy, and of the other, to infamy and ruin; and did they not succeed but too well? Did not a reverence for religion sensibly decay? Did not our infants almost learn to lisp out curses before they knew their horrid import? Did not our youth forget they were Americans, and regardless of the admonitions of the wise and aged, servilely copy from their tyrants those voices which finally must overthrow the empire of Great Britain? And must I be compelled to acknowledge, that even the noblest, fairest part of all the lower creation, did not entirely escape the cursed snare? When virtue has once erected her throne within the female breast, it is upon so solid a basis that nothing is able to expel the heavenly inhabitant. But have there not been some, few, indeed, I hope, whose youth and inexperience have rendered them a prey to wretches, whom, upon the least reflection, they would have despised and hated as foes to God and their country? I fear there have been some such unhappy instances, or why have I seen an honest father clothed with shame; or why a virtuous mother drowned in tears?

But I forbear, and come reluctantly to the transactions of that dismal night, when in such quick succession we felt the extremes of grief, astonishment and rage; when Heaven in anger, for a dreadful moment, suffered hell to take the reins; when Satan with his chosen band opened the sluices of New England's blood, and sacrilegiously polluted our land with the dead bodies of her guiltless sons! Let this sad tale of death never be told without a tear: let not the heaving bosom cease to burn with a manly indignation at the barbarous story, through the long tracts of future time: let every parent tell the shameful story to his listening children until tears of pity glisten in their eyes, and boiling passions shake their tender frames; and whilst the anniversary of that ill-fated night is kept a jubilee in the grim court of pandemonium, let all America join in one common prayer to Heaven, that the inhuman, unprovoked murders of the fifth of March, 1770, planned by Hillsborough, and a knot of treacherous knaves in Boston, and executed by the cruel hand of Preston and his sanguinary coadjutors, may ever stand on history without a parallel. But what, my countrymen, withheld the ready arm of vengeance from executing instant justice on the vile assassins? Perhaps you feared promiscuous carnage might ensue, and that the innocent might share the fate of those who had performed the infernal deed. But were not all guilty? Were you not too tender of the lives of those who came to fix a yoke on your necks?

But I must not too severely blame a fault, which great souls only can commit. May that magnificence of spirit which scorns the low pursuits of malice, may that generous compassion which often preserves from ruin, even a guilty villain, for ever actuate the noble bosoms of Americans! But let not the miscreant host vainly imagine that we feared their arms. No: them we despised; we dread nothing but slavery. Death is the creature of a poltroon's brains; 'tis immortality to sacrifice ourselves for the salvation of our country. We fear not death. That gloomy night, the pale-faced moon, and the affrighted stars that hurried through the sky, can witness that we fear not death. Our hearts which, at the recollection, glow with rage that four revolving years have scarcely taught us to restrain, can witness that we fear not death; and happy it is for those who dared to insult us, that their naked bones are not now piled up an everlasting monument of Massachusetts' bravery. But they retired, they fled, and in that flight they found their only safety. We then expected that the hand of public justice would soon inflict that punishment upon the murderers, which, by the laws of God and man, they had incurred.\* But let the unbiased pen of a Robertson, or perhaps of some equally famed American, conduct this trial before the great tribunal of succeeding generations. And though the murderers may escape the just resentment of an enraged people; though drowsy justice, intoxicated by the poisonous draught prepared for her cup, still nods upon her rotten seat, yet be assured, such complicated crimes will meet their due reward. Tell me, ye bloody butchers! ye villains high and low! ye wretches who contrived, as well as you who executed the inhuman deed! do you not feel the goads and stings of conscious guilt pierce through your savage bosoms? Though some of you may think yourselves exalted to a height that bids defiance to human justice; and others shroud yourselves beneath the mask of hypocrisy, and build your hopes of safety on the low arts of cunning, chicanery and falsehood; yet do you not sometimes feel the gnawings of that worm which never dies? Do not the injured shades of Maverick, Gray, Caldwell, Attucks and Carr, attend you in your solitary walks; arrest you even in the midst of your debaucheries, and fill even your dreams with terror? But if the unappeased manes of the dead should not disturb their murderers, yet surely even your obdurate hearts must shrink, and your guilty blood must chill within your rigid veins, when you behold the miserable Monk, the wretched victim of your savage cruelty. Observe his tottering knees, which scarce sustain his wasted body; look on his haggard eyes; mark well the death-like paleness on his fallen cheek, and tell me, does not the sight plant

\* See the speeches of John Adams and Josiah Quincy, Jr., at the trial of Preston and the soldiers, in the subsequent pages of this work.

daggers in your souls? Unhappy Monk! cut off, in the gay morn of manhood, from all the joys which sweeten life, doomed to drag on a pitiful existence, without even a hope to taste the pleasures of returning health! Yet Monk, thou livest not in vain; thou livest a warning to thy country, which sympathizes with thee in thy sufferings; thou livest an affecting, an alarming instance of the unbounded violence which lust of power, assisted by a standing army, can lead a traitor to commit.

For us he bled, and now languishes. The wounds, by which he is tortured to a lingering death, were aimed at our country! Surely the meek-eyed Charity can never behold such sufferings with indifference. Nor can her lenient hand forbear to pour oil and wine into these wounds, and to assuage, at least, what it cannot heal.\*

Patriotism is ever united with humanity and compassion. This noble affection, which impels us to sacrifice every thing dear, even life itself, to our country, involves in it a common sympathy and tenderness for every citizen, and must ever have a particular feeling for one who suffers in a public cause. Thoroughly persuaded of this, I need not add a word to engage your compassion and bounty towards a fellow-citizen, who, with long protracted anguish, falls a victim to the relentless rage of our common enemies.

Ye dark designing knaves, ye murderers, paricides! how dare you tread upon the earth, which has drank in the blood of slaughtered innocents, shed by your wicked hands? How dare you breathe that air which wafted to the ear of Heaven the groans of those who fell a sacrifice to your accursed ambition? But if the laboring earth doth not expand her jaws; if the air you breathe is not commissioned to be the minister of death; yet, hear it and tremble! The eye of Heaven penetrates the darkest chambers of the soul, traces the leading clue through all the labyrinths which your industrious folly has devised; and you, however you may have screened yourselves from human eyes, must be arraigned, must lift your hands, red with the blood of those whose death you have procured, at the tremendous bar of God!

But I gladly quit the gloomy theme of death, and leave you to improve the thought of that important day, when our naked souls must stand before that Being, from whom nothing can be hid. I would not dwell too long upon the horrid effects which have already followed from quartering regular troops in this town. Let our misfortunes teach posterity to guard against such evils for the future. Standing armies are sometimes, (I would by no means say generally, much less universally,) composed of

persons who have rendered themselves unfit to live in civil society; who have no other motives of conduct than those which a desire of the present gratification of their passions suggests; who have no property in any country; men who have given up their own liberties, and envy those who enjoy liberty; who are equally indifferent to the glory of a George or a Louis; who, for the addition of one penny a day to their wages, would desert from the Christian cross, and fight under the crescent of the Turkish sultan. From such men as these, what has not a State to fear? With such as these, usurping Cæsar passed the Rubicon; with such as these, he humbled mighty Rome, and forced the mistress of the world to own a master in a traitor. These are the men whom sceptred robbers now employ to frustrate the designs of God, and render vain the bounties which his gracious hand pours indiscriminately upon his creatures. By these, the miserable slaves in Turkey, Persia, and many other extensive countries, are rendered truly wretched, though their air is salubrious, and their soil luxuriously fertile. By these, France and Spain, though blessed by nature with all that administers to the convenience of life, have been reduced to that contemptible state in which they now appear; and by these, Britain—but if I was possessed of the gift of prophecy, I dare not, except by divine command, unfold the leaves on which the destiny of that once powerful kingdom is inscribed.

But since standing armies are so hurtful to a State, perhaps my countrymen may demand some substitute, some other means of rendering us secure against the incursions of a foreign enemy. But can you be one moment at a loss? Will not a well-disciplined militia afford you ample security against foreign foes? We want not courage; it is discipline alone in which we are exceeded by the most formidable troops that ever trod the earth. Surely our hearts flutter no more at the sound of war, than did those of the immortal band of Persia, the Macedonian phalanx, the invincible Roman legions, the Turkish janissaries, the *gens d'armes* of France, or the well known grenadiers of Britain. A well disciplined militia is a safe, an honorable guard to a community like this, whose inhabitants are by nature brave, and are laudably tenacious of that freedom in which they were born. From a well-regulated militia, we have nothing to fear; their interest is the same with that of the State. When a country is invaded, the militia are ready to appear in its defence; they march into the field with that fortitude which a consciousness of the justice of their cause inspires; they do not jeopard their lives for a master who considers them only as the instruments of his ambition, and whom they regard only as the daily dispenser of the scanty pittance of bread and water. No, they fight for their houses, their lands, for their wives, their children; for all who claim the tenderest names, and are held

\* Christopher Monk, one of the unfortunate victims of the massacre, was present at the delivery of the oration, and excited the greatest sympathy and attention. At the close of the exercises, a liberal collection was made in his behalf.

dearest in their hearts; they fight *pro aris et focis*, for their liberty, and for themselves, and for their God. And let it not offend, if I say, that no militia ever appeared in more flourishing condition, than that of this province now doth; and pardon me if I say, of this town in particular. I mean not to boast; I would not excite envy, but manly emulation. We have all one common cause; let it, therefore, be our only contest, who shall most contribute to the security of the liberties of America. And may the same kind Providence which has watched over this country from her infant state, still enable us to defeat our enemies. I cannot here forbear noticing the signal manner in which the designs of those who wish not well to us, have been discovered. The dark deeds of a treacherous cabal, have been brought to public view. You now know the serpents who, whilst cherished in your bosoms, were darting their envenomed stings into the vitals of the constitution. But the representatives of the people have fixed a mark on these ungrateful monsters, which, though it may not make them so secure as Cain of old, yet renders them at least as infamous. Indeed, it would be affrontive to the tutelary deity of this country, even to despair of saving it from all the snares which human policy can lay.

True it is, that the British ministry have annexed a salary to the office of the governor of this province, to be paid out of a revenue, raised in America, without our consent. They have attempted to render our courts of justice the instruments of extending the authority of acts of the British Parliament over this colony, by making the judges dependent on the British administration for their support. But this people will never be enslaved with their eyes open. The moment they knew that the governor was not such a governor as the charter of the province points out, he lost his power of hurting them. They were alarmed; they suspected him—have guarded against him, and he has found that a wise and a brave people, when they know their danger, are fruitful in expedients to escape it.

The courts of judicature, also, so far lost their dignity, by being supposed to be under an undue influence, that our representatives thought it absolutely necessary to resolve that they were bound to declare, that they would not receive any other salary besides that which the general court should grant them; and if they did not make this declaration, that it would be the duty of the House to impeach them.

Great expectations were also formed from the artful scheme of allowing the East India Company to export tea to America, upon their own account. This certainly, had it succeeded, would have effected the purpose of the contrivers, and gratified the most sanguine wishes of our adversaries. We soon should have found our trade in the hands of foreigners, and taxes imposed on every thing which we con-

sumed; nor would it have been strange, if, in a few years, a company in London should have purchased an exclusive right of trading to America. But their plot was soon discovered. The people soon were aware of the poison which, with so much craft and subtilty, had been concealed. Loss and disgrace ensued: and, perhaps this long concerted master-piece of policy, may issue in the total disuse of tea in this country, which will eventually be the saving of the lives and the estates of thousands. Yet while we rejoice that the adversary has not hitherto prevailed against us, let us by no means put off the harness. Restless malice and disappointed ambition will still suggest new measures to our inveterate enemies. Therefore, let us also be ready to take the field whenever danger calls; let us be united and strengthen the hands of each other by promoting a general union among us. Much has been done by the committees of correspondence, for this and the other towns of this province, towards uniting the inhabitants; let them still go on and prosper. Much has been done by the committees of correspondence for the Houses of Assembly, in this and our sister colonies, for uniting the inhabitants of the whole continent, for the security of their common interest. May success ever attend their generous endeavors. But permit me here to suggest a general congress of deputies, from the several Houses of Assembly on the continent, as the most effectual method of establishing such an union as the present posture of our affairs require. At such a congress, a firm foundation may be laid for the security of our rights and liberties; a system may be formed for our common safety, by a strict adherence to which, we shall be able to frustrate any attempts to overthrow our constitution; restore peace and harmony to America, and secure honor and wealth to Great Britain, even against the inclinations of her ministers, whose duty it is to study her welfare; and we shall also free ourselves from those unmannerly pillagers who impudently tell us, that they are licensed by an act of the British Parliament, to thrust their dirty hands into the pockets of every American. But I trust the happy time will come, when, with the besom of destruction, those noxious vermin will be swept for ever from the streets of Boston.

Surely you never will tamely suffer this country to be a den of thieves. Remember, my friends, from whom you sprang. Let not a meanness of spirit, unknown to those whom you boast of as your fathers, excite a thought to the dishonor of your mothers. I conjure you, by all that is dear, by all that is honorable, by all that is sacred, not only that ye pray, but that ye act; that, if necessary, ye fight, and even die, for the prosperity of our Jerusalem. Break in sunder, with noble disdain, the bonds with which the Philistines have bound you. Suffer not yourselves to be betrayed by the soft arts of luxury and effeminacy, into the



pit dugged for your destruction. Despise the glare of wealth. That people who pay greater respect to a wealthy villain than to an honest, upright man in poverty, almost deserve to be enslaved; they plainly show that wealth, however it may be acquired, is, in their esteem, to be preferred to virtue.

But I thank God, that America abounds in men who are superior to all temptation, whom nothing can divert from a steady pursuit of the interest of their country; who are at once its ornament and safeguard. And sure I am, I should not incur your displeasure, if I paid a respect, so justly due to their much honored characters, in this place. But when I name an Adams, such a numerous host of fellow-patriots rush upon my mind, that I fear it would take up too much of your time, should I attempt to call over the illustrious roll. But your grateful hearts will point you to the men; and their revered names, in all succeeding times, shall grace the annals of America. From them let us, my friends, take example; from them let us catch the divine enthusiasm; and feel, each for himself, the godlike pleasure of diffusing happiness on all around us; of delivering the oppressed from the iron grasp of tyranny; of changing the hoarse complaints and bitter moans of wretched slaves into those cheerful songs, which freedom and contentment must inspire. There is a heartfelt satisfaction in reflecting on our exertions for the public

weal, which all the sufferings an enraged tyrant can inflict, will never take away; which the ingratitude and reproaches of those whom we have saved from ruin, cannot rob us of. The virtuous asserter of the rights of mankind merits a reward, which even a want of success in his endeavors to save his country, the heaviest misfortune which can befall a genuine patriot, cannot entirely prevent him from receiving.

I have the most animating confidence that the present noble struggle for liberty will terminate gloriously for America. And let us play the man for our God, and for the cities of our God; while we are using the means in our power, let us humbly commit our righteous cause to the great Lord of the universe, who loveth righteousness and hateth iniquity. And having secured the approbation of our hearts, by a faithful and unwearied discharge of our duty to our country, let us joyfully leave our concerns in the hands of Him who raiseth up and pulleth down the empires and kingdoms of the world as he pleases; and with cheerful submission to his sovereign will, devoutly say, "Although the fig-tree shall not blossom, neither shall fruit be in the vines; the labor of the olive shall fail, and the field shall yield no meat; the flock shall be cut off from the fold, and there shall be no herd in the stalls; yet we will rejoice in the Lord, we will joy in the God of our salvation."

## JOHN ADAMS.

THE ancestors of John Adams were virtuous, humble and respectable. His father, John Adams, senior, was for several years a deacon of the first church in Braintree, Massachusetts, and for a long period acted a conspicuous part in the municipal affairs of that town. He is described as "a man of strict piety, and great integrity; much esteemed and beloved, wherever he was known, which was not far, his sphere of life being not extensive." In the latter part of October, 1784, this John Adams was married to Susannah, a daughter of Peter Boylston, by whom he had three children. John, the subject of this memoir, was the eldest, and was born at Braintree, on the nineteenth of October, 1735. At an early age he was placed under the tuition of Mr. Joseph Marsh, the minister of the first Congregational church of his native town, and subsequently with Mr. Joseph Cleverly, a reader of the Episcopal church at the same place. He entered Harvard College at the age of sixteen years, and in due course graduated, a finished scholar, bearing a high reputation for frankness, honesty and indefatigable industry. From college he went to Worcester, and became a teacher of the grammar school. This occupation afforded little satisfaction to him. "As a haughty monarch ascends his throne," he said, in a letter to a friend, "the pedagogue mounts his awful *great chair*, and dispenses right and justice through his whole empire. His obsequious subjects execute the imperial mandates with cheerfulness, and think it their high happiness to be employed in the service of the emperor. Sometimes paper, sometimes his penknife, now birch, now arithmetic, now a ferule, then A B C, then scolding, then thwacking, calls for the pedagogue's attention. At length, his spirits all exhausted, down comes pedagogue from his throne, and walks out in awful solemnity, through a cringing multitude. In the afternoon, he passes through the same dreadful scenes, smokes his pipe and goes to bed. \* \* \* \* The school is indeed a school of affliction. A large number of little runtlings, just capable of lisping A B C, and troubling the master. But Dr. Savil tells me for my comfort, 'by cultivating and pruning these tender plants in the garden of Worcester, I shall make some of them plants of renown and cedars of Lebanon.' However this be, I am certain that keeping this school any length of time would make a base weed and ignoble shrub of me."\* In 1756 Mr. Adams joined to the labors of his school, that of the study of law. Necessity drove me to this determination, he says in his diary, but my inclination, I think, was to preach; however, that would not do. He continued in this course of double duty and "hard fortune" for two years, after which he returned to his native town and commenced the practice of his profession. After the death of his father, which occurred in May, 1761, he continued to reside at the family mansion until his marriage, in the fall of 1764.

The first prominent public duty to which Mr. Adams was called, was connected with the Stamp Act difficulties, in 1765. One of the consequences of that act was the closing of the courts of justice in the province. Mr. Adams, associated with Jeremiah Gridley and James Otis, was deputed to appear as counsel for the town of Boston, before the governor and council, in support of its memorial, urging the opening of the courts. "It fell upon me," he says, "without one moment's opportunity to consult any authorities, to open an argument upon a

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\* Life and Works of John Adams, vol. 1, p. 27.

question that was never made before,—whether the courts of law should be open or not? I grounded my argument on the invalidity of the stamp act, it not being in any sense our act, having never consented to it; but, lest that foundation should not be sufficient, on the present necessity to prevent a failure of justice, and the present impossibility of carrying that act into execution.\* This argument had no weight with the governor, who considered the matter in question as “belonging to the courts to decide.” However, after a short delay, the courts were opened, and in a few weeks the stamp act was repealed. The same year (1765) the valuable dissertations on the canon and feudal law, appeared in the *Boston Gazette*. These were written by Mr. Adams, and attracted much attention in the old as well as the new world. Early in 1768, Mr. Adams removed to Boston, where, soon after, the office of advocate general in the court of admiralty was tendered him by Governor Bernard. This he refused. From this period he became deeply involved in the duties of his profession, and gradually attained a high position at the bar.

At the trials of Captain Preston and the British soldiers, for the violence committed by them on the evening of the fifth of March, 1770, Mr. Adams and Josiah Quincy, Jr., appeared in behalf of the prisoners. Mr. Quincy opened the defence with great power and eloquence, and was followed by Mr. Adams, who confined himself to “a clear recapitulation of the principles of the common law in cases of homicide.”† The soldiers were acquitted.

The extensive labors of his profession, together with the frequent obligations he was subjected to, to perform some arduous duties connected with public affairs, began to work with serious effects upon his health. On this account he was compelled to relinquish much of his business and political affairs, abandon his house in the town, and return to his native village. This he did in the spring of 1771, retaining his office in Boston. The air of “still, calm, happy Braintree, and the fine health-laden breezes from the sea,” together with the amusements incident to a country life, soon restored him to health, and in 1773 he again entered the arena of politics, contributing a series of papers to the *Massachusetts Gazette*, on the independence of the judiciary, in answer to the rumor that the salaries of the colonial judges were to be paid by the Crown, a measure looked upon by many of the colonists as productive of much injury. These papers are rich in professional learning, and effected the purpose for which they were intended.

With the arrival of General Gage, in 1774, commences a new chapter in the life of Mr. Adams. The stagnation of trade and commerce, brought about by the closing of the port of Boston, had reduced the emoluments of his profession to a merely nominal sum, and the picture of the future then spread before him was dark, sad and gloomy enough. But he was not dispirited. “We live, my dear soul, in an age of trial,” he said in a letter to his wife. “What will be the consequence, I know not. The town of Boston, for aught I can see, must suffer martyrdom. It must expire. And our principal consolation is, that it dies in a noble cause—the cause of truth, of virtue, of liberty, and of humanity, and that it will probably have a glorious resurrection to greater wealth, splendor and power than ever.” He then continued, advising a retrenchment in the expense of his family, and a strict frugality, that they might be able to contribute to the appeals of the suffering. “Don’t imagine from all this that I am in the dumps,” he said. “Far otherwise; I can truly say that I have felt more spirits and activity since the arrival of this news than I have done for years. I look upon this as the last effort of Lord North’s despair, and he will as surely be defeated in it as he was in the project of the tea.‡ About this time the House of Representatives of Massachusetts attempted to place Mr. Adams in the council of General Gage, but the attempt was frustrated by the refusal of the governor to receive him. In 1774 he was elected a member of the Congress which met in September of that year, and upon its organization, took his seat. Of many of the important committees of this

\* *Diary of John Adams*, 2d vol. of the Works, page 158.

† See the speeches of Mr. Adams and Mr. Quincy, in the subsequent pages of this volume.

‡ *Life and Works of John Adams*, vol. 1, page 143. The Boston Port bill went into operation on the first of June, 1774. Business terminated at noon; the harbor was closed against all vessels, and the people were deprived of the means of obtaining the necessaries of life. Contributions were raised in other cities for their relief, and the inhabitants of Marblehead rendered the use of their wharves to the merchants of the oppressed city.

Congress he was a member, and rendered eminent service in the preparation of some of the state papers of that body. He remained in Congress until the autumn of 1777, when he was chosen a commissioner to the Court of France, in the place of Silas Deane, who had been appointed the previous year, with Dr. Franklin and Arthur Lee, "to negotiate treaties with foreign powers." On the thirteenth of February, 1778, he sailed from Mount Wollaston, in Braintree, taking with him his eldest son, John Quincy Adams; and on the eighth of April following arrived at Paris. He learned on his arrival that Dr. Franklin and Mr. Lee had concluded the treaties of alliance and commerce between France and the American Colonies, and all that remained to be done was their ratification. After continuing in Europe a few months, without waiting for a recall he returned to Boston, where he arrived on the second of August, 1779. On his arrival, he was elected to the convention which formed the constitution of Massachusetts, and as a member of the committee, prepared the draught of that instrument. While in this position he was appointed by Congress "a minister plenipotentiary for negotiating a treaty of peace and a treaty of commerce with Great Britain."

This appointment he accepted, and on the afternoon of the thirteenth of November, sailed on board the French Frigate, *The Sensible*. After a long and tedious passage he reached Paris, and at once entered upon the arduous duties of his mission. A short time subsequent to the appointment of Mr. Adams to this service, Henry Laurens was appointed to negotiate a treaty of amity and commerce with the United Netherlands. On his passage to Europe he was captured by a British cruiser, and confined in the Tower at London. On the receipt of the intelligence of Mr. Laurens' misfortune, Mr. Adams proceeded to the Netherlands. Soon after he received a commission from Congress to negotiate a loan, and to conclude a treaty of amity and commerce with the States General of Holland, with instructions to accede to any treaty of neutrality that might arise from regulations to be perfected by a Congress of the European States, then in contemplation. For the next two years the career of Mr. Adams exhibits an overwhelming variety of duties.

Congress, in 1781, made a new appointment of commissioners for concluding a treaty of peace with Great Britain. These were Benjamin Franklin, John Jay, Henry Laurens, Thomas Jefferson, and Mr. Adams. A provisional treaty was signed at Paris in November, 1782, and a definitive treaty concluded on the third of September of the following year. While the treaty was under consideration Mr. Adams arrived in Paris from Holland, where he had resided for a greater portion of his time since his arrival from America, and on its conclusion he again returned to Holland, where he remained until 1784. In February, 1785, he was appointed by Congress the first minister plenipotentiary from the United States to Great Britain, and in the subsequent May removed to England. His course in this position is too familiar to require notice here. On his return home in 1788, he was elected the first Vice President of the United States, under the Federal Constitution, in which position he remained during the eight years' administration of Washington, on the termination of which he was elected President.\* Soon

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\* On the day of his inauguration, March 4th, 1797, Mr. Adams was in his sixty-second year. He was dressed in a full suit of pearl-colored broadcloth, with powdered hair. He was then bald on the top of his head. Mr. Adams was of middle stature and full person, and of slow, deliberate manner unless he was excited, and when this happened he expressed himself with great energy. He was a man of strong mind, of great learning, and of eminent ability to use knowledge, both in speech and writing. He was ever a man of purest morals; and is said to have been a firm believer in Christianity, not from habit and example, but from diligent investigations of its proofs. He had an uncompromising regard for his own opinion, and was strongly contrasted with Washington in this respect. He seemed to have supposed that his opinions could not be corrected by those of other men, nor bettered by any comparison. He had been from early manhood a zealous patriot, and had rendered most essential services to his country, at home and abroad. These he always seems to have had in mind. He well remembered the painful struggles experienced in Europe, to obtain aid for the patriots at home, and an acknowledgment of independence from governments there, while the war was yet regarded in England as rebellion. He ought to have known, as would seem from his own writings, in what manner public services are estimated. An individual can easily remember how much good he has done to a community; but those who are benefited as easily forget. If public ingratitude is common, it is also very natural. It is not improbable that Mr. Adams was impatient in finding how much more the easily-understood services of military men were appreciated, than were the secluded though no less important ones of diplomatic agency and cabinet counsel. So made up from natural propensities, and from the circumstances of his life, Mr. Adams came to the presidency at the time when more forbearance and discretion were required than he is supposed to have had. He seems to have been deficient in the rare excellence of attempting to see himself as others

after his retirement from the Presidency, the office of Governor of his native State was tendered him. This honor he declined, on account of his advanced age and a desire to remain in the quietude of his home.

On the assembling of the Massachusetts convention for the revision of the constitution of that State, he was chosen President of that body. This was his last public act. He died on the afternoon of the Fourth of July, 1826. A remarkable particular in the last scene of his varied and memorable life is thus given by one of his cotemporaries. The jubilee of independence roused his declining faculties. He inquired the cause of the salutes, and was told it was the Fourth of July. He answered, "It is a great and glorious day," and never spake more. Thus his last thoughts and latest words were like those of his whole life—thoughts and words which evinced a soul replete with love of country and interest in her welfare.\*

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SPEECH IN DEFENCE OF THE SOLDIERS.†

This speech was delivered by Mr. Adams in the trial of William Weems, James Hartigan, and others, soldiers in His Majesty's Twentieth regiment, for the murder of Crispus Attucks, Samuel Gray, and others, on Monday evening, the fifth of March, 1770.‡

MAY IT PLEASE YOUR HONORS, AND YOU, GENTLEMEN OF THE JURY: I am for the prisoners at the bar, and shall apologize for it only in the words of the Marquis Beccaria: "If I can but be the instrument of preserving one life, his blessings and tears of transport shall be a sufficient consolation to me for the contempt of all mankind." As the prisoners stand before you for their lives, it may be proper to recollect with what temper the law requires we should proceed to this trial. The form of proceeding at their arraignment has discovered that the spirit of the law upon such occasions is conformable to humanity, to common sense and feeling; that it is all benignity and candor. And the trial commences with the prayer of

saw him; and he ventured to act as though everybody saw as he saw himself. He considered only what was right in his own view, and that was to be carried by main force, whatever were the obstacles.—*Familiar Letters on Public Characters*, pp. 146–147.

\* Thomas Jefferson died on the same day with Mr. Adams. Mr. Jefferson's death occurred at ten minutes before one o'clock, and Mr. Adams' at five o'clock, P. M. The Declaration of Independence was first read to the people at Philadelphia, at a quarter before five o'clock, on the Fourth of July, 1776.—*Christian Journal: Pennsylvania Packet: Freeman's Journal*, 1777: *Judson's Biography of the Signers*.

† This speech is taken from a report of the trial, "taken in short-hand by John Hodgson," and "published by permission of the Court," in Boston, 1770. A copy of this pamphlet, which makes nearly two hundred and fifty closely-printed pages, is in the Library of the New York Historical Society.

‡ See note at page 60.

the court, expressed by the clerk, to the Supreme *Judge* of judges, empires, and worlds, "God send you a good deliverance."

We find, in the rules laid down by the greatest English judges, who have been the brightest of mankind:—we are to look upon it as more beneficial that many guilty persons should escape unpunished than one innocent person should suffer. The reason is, because it is of more importance to the community that innocence should be protected than it is that guilt should be punished; for guilt and crimes are so frequent in the world that all of them cannot be punished; and many times they happen in such a manner that it is not of much consequence to the public whether they are punished or not. But when innocence itself is brought to the bar and condemned, especially to die, the subject will exclaim, it is immaterial to me whether I behave well or ill, for virtue itself is no security. And if such a sentiment as this should take place in the mind of the subject, there would be an end to all security whatsoever. I will read the words of the law itself.

The rules I shall produce to you from Lord Chief Justice Hale, whose character as a lawyer, a man of learning and philosophy, and a Christian, will be disputed by nobody living; one of the greatest and best characters the English nation ever produced. His words are these (2 H. H. P. C.): *Tutius semper est errare in acquietando quam in puniendo, ex parte misericordiæ quam ex parte justitiæ*—it is always safer to err in acquitting than punishing, on the part of mercy than the part of justice. The next is from the same authority, 305. *Tutius erratur ex parte mitiori*—it is always safer to err on the milder side, the side of mercy. H. H. P. C. 509: The best rule in doubtful cases is rather to incline to acquittal than conviction; and in page 300: *Quod dubitas, ne feceris*—where you are doubtful, never act; that is, if you doubt of the prisoner's guilt, never declare him guilty. This is always the rule, espe

cially in cases of life. Another rule from the same author, 289, where he says: In some cases presumptive evidences go far to prove a person guilty, though there is no express proof of the fact to be committed by him; but then it must be very warily pressed, for it is better five guilty persons should escape unpunished than one innocent person should die.

The next authority shall be from another judge of equal character, considering the age wherein he lived; that is, Chancellor Fortescue in *Praise of the Laws of England*, page 59. This is a very ancient writer on the English law. His words are:—"Indeed, one would rather, much rather, that twenty guilty persons escape the punishment of death, than one innocent person be condemned and suffer capitally." Lord Chief Justice Hale says:—"It is better five guilty persons escape, than one innocent person suffer." Lord Chancellor Fortescue, you see, carries the matter further, and says, "Indeed, one had rather, much rather, that twenty guilty persons should escape, than one innocent person suffer capitally." Indeed, this rule is not peculiar to the English law; there never was a system of laws in the world in which this rule did not prevail. It prevailed in the ancient Roman law, and, which is more remarkable, it prevails in the modern Roman law. Even the judges in the Courts of Inquisition, who with racks, burnings, and scourges examine criminals,—even there they preserve it as a maxim, that it is better the guilty should escape punishment than the innocent suffer. *Satius esse nocentem absolvi quam insentem damnari*. This is the temper we ought to set out with, and these the rules we are to be governed by. And I shall take it for granted, as a first principle, that the eight prisoners at the bar had better be all acquitted, though we should admit them all to be guilty, than that any one of them should, by your verdict, be found guilty, being innocent.

I shall now consider the several divisions of law, under which the evidence will arrange itself.

The action now before you is homicide; that is, the killing of one man by another. The law calls it homicide; but it is not criminal in all cases for one man to slay another. Had the prisoners been on the *Plains of Abraham*, and slain an hundred *Frenchmen* apiece, the English law would have considered it as a commendable action, virtuous and praiseworthy; so that every instance of killing a man is not a crime in the eye of the law. There are many other instances which I cannot enumerate—an officer that executes a person under sentence of death, &c. So that, gentlemen, every instance of one man's killing another is not a crime, much less a crime to be punished with death. But to descend to some more particulars.

The law divides homicide into three branches: the first is justifiable, the second excusable, and the third felonious. Felonious homicide is subdivided into two branches: the

first is murder, which is killing with malice aforethought; the second is manslaughter, which is killing a man on a sudden provocation. Here, gentlemen, are four sorts of homicide; and you are to consider whether all the evidence amounts to the first, second, third, or fourth of these heads. The fact was the slaying five unhappy persons that night. You are to consider whether it was justifiable, excusable, or felonious; and if felonious, whether it was murder or manslaughter. One of these four it must be. You need not divide your attention to any more particulars. I shall, however, before I come to the evidence, show you several authorities, which will assist you and me in contemplating the evidence before us.

I shall begin with justifiable homicide. If an officer, a sheriff, execute a man on the gallows, draws and quarters him, as in case of high treason, and cuts off his head, this is justifiable homicide. It is his duty. So also, gentlemen, the law has planted fences and barriers around every individual; it is a castle round every man's person, as well as his house. As the love of God and our neighbor comprehends the whole duty of man, so self-love and social comprehend all the duties we owe to mankind; and the first branch is self-love, which is not only our indisputable right, but our clearest duty. By the laws of nature, this is interwoven in the heart of every individual. God Almighty, whose laws we cannot alter, has implanted it there, and we can annihilate ourselves as easily as root out this affection for ourselves. It is the first and strongest principle in our nature. Justice Blackstone calls it "the primary canon in the law of nature." That precept of our holy religion which commands us to love our neighbor as ourselves, does not command us to love our neighbor better than ourselves, or so well. No Christian divine has given this interpretation. The precept enjoins that our benevolence to our fellow-men should be as real and sincere as our affections to ourselves, not that it should be as great in degree. A man is authorized, therefore, by common sense and the laws of England, as well as those of nature, to love himself better than his fellow-subject. If two persons are cast away at sea, and get on a plank (a case put by Sir Francis Bacon), and the plank is insufficient to hold them both, the one has a right to push the other off to save himself. The rules of the common law, therefore, which authorize a man to preserve his own life at the expense of another's, are not contradicted by any divine or moral law. We talk of liberty and property, but if we cut up the law of self-defence, we cut up the foundation of both; and if we give up this, the rest is of very little value, and therefore this principle must be strictly attended to; for whatsoever the law pronounces in the case of these eight soldiers will be the law to other persons and after ages. All the persons that have slain mankind in this country, from the beginning to

this day, had better have been acquitted, than that a wrong rule and precedent should be established.

I shall now read to you a few authorities on this subject of self-defence. Foster, 273, in the case of justifiable self-defence:—"The injured party may repel force with force in defence of person, habitation, or property, against one who manifestly intendeth and endeavoreth with violence or surprise to commit a known felony upon either. In these cases he is not obliged to retreat, but may pursue his adversary till he finds himself out of danger; and if in a conflict between them he happeneth to kill, such killing is justifiable." Keeling, 128, 129. I must entreat you to consider the words of this authority. The injured person may repel force by force against any who endeavors to commit any kind of felony on him or his. Here the rule is, I have a right to stand on my own defence, if you intend to commit felony. If any of the persons made an attack on these soldiers, with an intention to rob them, if it was but to take their hats feloniously, they had a right to kill them on the spot, and had no business to retreat. If a robber meets me in the street, and commands me to surrender my purse, I have a right to kill him without asking any questions. If a person commits a bare assault on me, this will not justify killing; but if he assaults me in such a manner as to discover an intention to kill me, I have a right to destroy him, that I may put it out of his power to kill me. In the case you will have to consider, I do not know there was any attempt to steal from these persons; however, there were some persons concerned who would, probably enough, have stolen, if there had been any thing to steal, and many were there who had no such disposition. But this is not the point we aim at. The question is, are you satisfied the people made the attack in order to kill the soldiers? If you are satisfied that the people, whoever they were, made that assault with a design to kill or maim the soldiers, this was such an assault as will justify the soldiers killing in their own defence. Further, it seems to me, we may make another question, whether you are satisfied that their real intention was to kill or maim, or not? If any reasonable man, in the situation of one of these soldiers, would have had reason to believe in the time of it, that the people came with an intention to kill him, whether you have this satisfaction now or not in your own minds, they were justifiable, at least excusable, in firing. You and I may be suspicious that the people who made this assault on the soldiers, did it to put them to the flight, on purpose that they might go exulting about the town afterwards in triumph; but this will not do. You must place yourselves in the situation of Wemms and Killroy—consider yourselves as knowing that the prejudices of the world about you were against you—that the people about you thought you came to dragoon them into

obedience to statutes, instructions, mandates, and edicts, which they thoroughly detested—that many of these people were thoughtless and inconsiderate, old and young, sailors and landmen, negroes and mulattoes—that they, the soldiers, had no friends about them, the rest were in opposition to them; with all the bells ringing to call the town together to assist the people in King street, for they knew by that time that there was no fire; the people shouting, huzzaing, and making the mob whistle, as they call it, which, when a boy makes it in the street, is no formidable thing, but when made by a multitude, is a most hideous shriek, almost as terrible as an Indian yell; the people crying, "Kill them! kill them! Knock them over!"—heaving snowballs, oyster-shells, clubs, white birch sticks, three inches and a half diameter;—consider yourselves in this situation, and then judge whether a reasonable man in the soldiers' situation would not have concluded they were going to kill him. I believe, if I was to reverse the scene, I should bring it home to our own bosoms. Suppose Colonel Marshall, when he came out of his own door, and saw these grenadiers coming down, with swords, &c., had thought it proper to have appointed a military watch; suppose he had assembled Gray and Attucks that were killed, or any other person in town, and implanted them in that station as a military watch, and there had come from Murray's barracks thirty or forty soldiers, with no other arms than snowballs, cakes of ice, oyster-shells, cinders, and clubs, and attacked this military watch in this manner, what do you suppose would have been the feelings and reasonings of any of our householders. I confess, I believe they would not have borne one half of what the witnesses have sworn the soldiers bore, till they had shot down as many as were necessary to intimidate and disperse the rest. Because the law does not oblige us to bear insults to the danger of our lives, to stand still with such a number of people around us, throwing such things at us, and threatening our lives, until we are disabled to defend ourselves.

"Where a known felony is attempted upon the person, be it to rob or murder, here the party assaulted may repel force with force, and even his own servant, then attendant on him, or any other person present, may interpose for preventing mischief, and if death ensues, the party so interposing will be justified. In this case nature and social duty co-operate."—Foster, 274. Hawkins, P. C., chapter 28, § 25, towards the end:—"Yet it seems that a private person, a fortiori, an officer of justice, who happens unavoidably to kill another in endeavoring to defend himself from or suppress dangerous rioters, may justify the fact, inasmuch as he only does his duty in aid of the public justice." Section 24:—"And I can see no reason why a person, who, without provocation, is assaulted by another, in any place whatsoever, in such a manner as plainly shows

an intent to murder him, as by discharging a pistol, or pushing at him with a drawn sword, &c., may not justify killing such an assailant, as much as if he had attempted to rob him. For is not he who attempts to murder me more injurious than he who barely attempts to rob me? And can it be more justifiable to fight for my goods than for my life? And it is not only highly agreeable to reason that a man in such circumstances may lawfully kill another, but it seems also to be confirmed by the general tenor of our law books, which, speaking of homicide *se defendo*, suppose it done in some quarrel or affray." "And so, perhaps, the killing of dangerous rioters may be justified by any private persons, who cannot otherwise suppress them or defend themselves from them, inasmuch as every private person seems to be authorized by the law to arm himself for the purposes aforesaid."—Hawkins, p. 71, § 14. Here every private person is authorized to arm himself; and on the strength of this authority, I do not deny the inhabitants had a right to arm themselves at that time, for their defence, not for offence. That distinction is material, and must be attended to.

Hawkins, p. 75, § 14: "And not only he who on an assault retreats to the wall, or some such strait, beyond which he can go no further before he kills the other, is judged by the law to act upon unavoidable necessity; but also he who being assaulted in such a manner and in such a place, that he cannot go back without manifestly endangering his life, kills the other without retreating at all." § 16: "And an officer who kills one that insults him in the execution of his office, and where a private person, that kills one who feloniously assaults him in the highway, may justify the fact without ever giving back at all."

There is no occasion for the magistrate to read the riot act. In the case before you, I suppose you will be satisfied when you come to examine the witnesses and compare it with the rules of the common law, abstracted from all mutiny-acts and articles of war, that these soldiers were in such a situation that they could not help themselves. People were coming from Royal Exchange Lane, and other parts of the town, with clubs and cord-wood sticks; the soldiers were planted by the wall of the Custom House; they could not retreat; they were surrounded on all sides, for there were people behind them as well as before them; there were a number of people in Royal Exchange Lane; the soldiers were so near to the Custom House that they could not retreat, unless they had gone into the brick wall of it. I shall show you presently that all the party concerned in this unlawful design were guilty of what any one of them did; if any body threw a snow-ball, it was the act of the whole party; if any struck with a club or threw a club, and the club had killed any body, the whole party would have been guilty of murder in law.

Ld. C. J. Holt, in *Mawgrige's case*, Keyling

128, says: "Now it has been held, that if A of his malice premeditated assaults B to kill him, and B draws his sword and attacks A, and pursues him, then A, for his safety, gives back and retreats to a wall, and B still pursuing him with his drawn sword, A in his defence kills B; this is murder in A. For A having malice against B, and in pursuance thereof endeavoring to kill him, is answerable for all the consequences, of which he was the original cause. It is not reasonable for any man that is dangerously assaulted, and when he perceives his life in danger from his adversary, but to have liberty for the security of his own life, to pursue him that maliciously assaulted him; for he that has manifested that he has malice against another, is not fit to be trusted with a dangerous weapon in his hand. And so resolved by all the judges when they met at Seargeant's Inn, in preparation for my Lord Morley's trial."

In the case here we will take Montgomery, if you please, when he was attacked by the stout man with a stick, who aimed it at his head, with a number of people round him, crying out, Kill them! kill them! Had he not a right to kill the man? If all the party were guilty of the assault made by the stout man, and all of them had discovered malice in their hearts, had not Montgomery a right, according to Lord Chief Justice Holt, to put it out of their power to wreak their malice upon him? I will not at present look for any more authorities in the point of self-defence; you will be able to judge from these how far the law goes in justifying or excusing any person in defence of himself, or taking away the life of another who threatens him in life or limb. The next point is this: that in case of an unlawful assembly, all and every one of the assembly is guilty of all and every unlawful act committed by any one of that assembly in prosecution of the unlawful design they set out upon.

Rules of law should be universally known, whatever effect they may have on politics; they are rules of common law, the law of the land; and it is certainly true, that wherever there is an unlawful assembly, let it consist of many persons or a few, every man in it is guilty of every unlawful act committed by any one of the whole party, be they more or be they less, in pursuance of their unlawful design. This is the policy of the law: to discourage and prevent riots, insurrections, turbulence, and tumults.

In the continual vicissitudes of human things, amidst the shocks of fortune and the whirls of passion that take place at certain critical seasons, even in the mildest government, the people are liable to run into riots and tumults. There are Church-quakes and State-quakes in the moral and political world, as well as earth-quakes, storms, and tempests in the physical. Thus much, however, must be said in favor of the people and of human nature, that it is a general, if not universal truth, that the aptitude of the people to mutinies, seditions, tumults, and insur-



rections, is in direct proportion to the despotism of the government. In governments completely despotic, i. e. where the will of one man is the only law, this disposition is most prevalent. In aristocracies next—in mixed monarchies, less than either of the former—in complete republics the least of all, and under the same form of government as in a limited monarchy, for example, the virtue and wisdom of the administrations may generally be measured by the peace and order that are seen among the people. However this may be, such is the imperfection of all things in this world, that no form of government, and perhaps no virtue or wisdom in the administration, can at all times avoid riots and disorders among the people.

Now, it is from this difficulty that the policy of the law has framed such strong discouragements to secure the people against tumults; because, when they once begin, there is danger of their running to such excesses as will overturn the whole system of government. There is the rule from the reverend sage of the law, so often quoted before.

1 H. H. P. C. 437: "All present, aiding and assisting, are equally principal with him that gave the stroke, whereof the party died. For though one gave the stroke, yet in interpretation of law, it is the stroke of every person that was present aiding and assisting."

1 H. H. P. C. 440. "If divers come with one assent to do mischief, as to kill, rob or beat, and one doeth it, they are all principals in the felony. If many be present, and one only give the stroke whereof the party dies, they are all principal, if they came for that purpose."

Now if the party at Dock Square, came with an intention only to beat the soldiers, and began the affray with them, and any of them had been accidentally killed, it would have been murder, because it was an unlawful design they came upon. If but one does it, they are all considered in the eye of the law to be guilty; if any one gives the mortal stroke, they are all principal here, therefore there is a reversal of the scene. If you are satisfied that these soldiers were there on a lawful design, and it should be proved any of them shot without provocation, and killed any body, he only is answerable for it. First Hale's Pleas of the Crown.

1 H. H. P. C. 444. "Although if many come upon an unlawful design, and one of the company kill one of the adverse party in pursuance of that design, all are principals; yet if many be together upon a lawful account, and one of the company kill another of an adverse party, without any particular abetment of the rest to this fact of homicide, they are not all guilty that are of the company, but only those that gave the stroke or actually abetted him to do it."

1 H. H. P. C. 445. "In a case of a riotous assembly to rob or steal deer or do any unlawful act or violence, there the offence of one is the offence of all the company."

In another place 1 H. H. P. C. 439. "The

Lord Dacre and divers others went to steal deer in the park of one Pelham. Raydon, one of the company, killed the keeper in the park—the Lord Dacre and the rest of the company being in the other part of the park. Yet it was adjudged murder in them all, and they died for it. And he quotes Crompton 25, Dalton 93, p. 241. "So that in so strong a case as this, where this nobleman set out to hunt deer in the ground of another, he was in one part of the park and his company in another part, yet they were all guilty of murder."

The next is Hale's Pleas of the Crown, 1 H. H. P. C. 440. "The case of Drayton Bassit; divers persons doing an unlawful act, all are guilty of what is done by one."

Foster, 353, 354. "A general resolution against all opposers, whether such resolution appears upon evidence to have been actually and implicitly entered into by the confederates, or may reasonably be collected from their number, arms or behavior, at or before the scene of action, such resolutions so proved have always been considered as strong ingredients in cases of this kind. And in cases of homicide, committed in consequence of them, every person present, in the sense of the law, when the homicide has been committed, has been involved in the guilt of him that gave the mortal blow."

Foster. "The cases of Lord Dacre, mentioned by Hale, and of Pudsey, reported by Crompton and cited by Hale, turned upon this point. The offences they respectively stood charged with, as principals, were committed far out of their sight and hearing, and yet both were held to be present. It was sufficient that at the instant the facts were committed, they were of the same party and upon the same pursuit, and under the same engagements and expectations of mutual defence and support with those that did the facts."

Thus far I have proceeded, and I believe it will not be hereafter disputed by any body, that this law ought to be known to every one who has any disposition to be concerned in an unlawful assembly, whatever mischief happens in the prosecution of the design they set out upon; all are answerable for it. It is necessary we should consider the definitions of some other crimes as well as murder; sometimes one crime gives occasion to another. An assault is sometimes the occasion of manslaughter, sometimes of excusable homicide. It is necessary to consider what is a riot. 1 Hawk., c. 65, § 2. I shall give you the definition of it. "Whosoever more than three persons use force or violence, for the accomplishment of any design whatever, all concerned are rioters."

Were there not more than three persons in Dock Square? Did they not agree to go to King street, and attack the main guard? Where, then, is the reason for hesitation at calling it a riot? If we cannot speak the law as it is, where is our liberty? And this is law,

that wherever more than three persons are gathered together to accomplish any thing with force, it is a riot. 1 Hawk., c. 65, § 2. "Wherever more than three use force and violence, all who are concerned therein are rioters. But in some cases wherein the law authorizes force, it is lawful and commendable to use it. As for a sheriff, 2 And. 67 Poph. 121, or constable, 3 H. 7, 10, 6, or perhaps even for a private person, Poph. 121, Moore 656, to assemble a competent number of people, in order with force to oppose rebels or enemies or rioters, and afterwards with such force actually to suppress them."

I do not mean to apply the word rebel on this occasion; I have no reason to suppose that ever there was one in Boston, at least among the natives of the country; but rioters are in the same situation, as far as my argument is concerned, and proper officers may suppress rioters, and so may even private persons.

If we strip ourselves free from all military laws, mutiny acts, articles of war and soldiers' oaths, and consider these prisoners as neighbors; if any of their neighbors were attacked in King street, they had a right to collect together to suppress this riot and combination. If any number of persons meet together at a fair or market, and happen to fall together by the ears, they are not guilty of a riot, but of a sudden affray. Here is another paragraph which I must read to you. 1 Hawkins, c. 65, § 3. "If a number of persons being met together at a fair or market, or on any other lawful or innocent occasion, happen on a sudden quarrel, to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which none are guilty but those who actually engage in it," &c. End of the §. It would be endless, as well as superfluous, to examine whether every particular person engaged in a riot, were in truth one of the first assembly or actually had a previous knowledge of the design thereof. I have endeavored to produce the best authorities, and to give you the rules of law in their words, for I desire not to advance any thing of my own. I choose to lay down the rules of law from authorities which cannot be disputed. Another point is this, whether and how far a private person may aid another in distress? Suppose a press-gang should come on shore in this town and assault any sailor or householder in King street, in order to carry them on board one of his Majesty's ships, and impress him without any warrant as a seaman in his Majesty's service; how far do you suppose the inhabitants would think themselves warranted by law to interpose against that lawless press-gang? I agree that such a press-gang would be as unlawful an assembly as that was in King street. If they were to press an inhabitant and carry him off for a sailor, would not the inhabitants think themselves warranted by law to interpose in behalf of their fellow-citizen? Now, gentlemen, if the soldiers had no right to interpose

in the relief of the sentry, the inhabitants would have no right to interpose with regard to the citizen, for whatever is law for a soldier is law for a sailor and for a citizen. They all stand upon an equal footing in this respect. I believe we shall not have it disputed that it would be lawful to go into King street and help an honest man there against the press-master. We have many instances in the books which authorize it, which I shall produce to you presently."

Now, suppose you should have a jealousy in your minds that the people who made this attack upon the sentry had nothing in their intention more than to take him off his post, and that was threatened by some. Suppose they intended to go a little further, and tar and feather him, or to ride him (as the phrase is in Hudibras), he would have had a good right to have stood upon his defence—the defence of his liberty; and if he could not preserve that without the hazard to his own life, he would be warranted in depriving those of life who were endeavoring to deprive him of his. That is a point I would not give up for my right hand—nay, for my life.

Well, I say, if the people did this, or if this was only their intention, surely the officers and soldiers had a right to go to his relief; and therefore they set out upon a lawful errand. They were, therefore, a lawful assembly, if we only consider them as private subjects and fellow-citizens, without regard to Mutiny Acts, Articles of War, or Soldiers' Oaths. A private person, or any number of private persons, have a right to go to the assistance of their fellow-subject in distress or danger of his life, when assaulted and in danger from a few or a multitude. Keyl. 136:—"If a man perceives another by force to be injuriously treated, pressed and restrained of his liberty, though the person abused doth not complain or call for aid or assistance, and others, out of compassion, shall come to his rescue, and kill any of those that shall so restrain him, that is manslaughter." Keyl.:—"A and others, without any warrant, impress B to serve the king at sea. B quietly submitted, and went off with the press-master. Hugett and the others pursued them, and required a sight of their warrant; but they showing a piece of paper that was not a sufficient warrant, thereupon Hugett with the others drew their swords, and the pressmasters theirs, and so there was a combat, and those who endeavored to rescue the pressed man killed one of the pretended pressmasters. This was but manslaughter; for when the liberty of one subject is invaded, it affects all the rest. It is a provocation to all people, as being of ill example and pernicious consequences."

2. Lord Raymond, 1301. The Queen verſus Tooley et alios. Lord Chief Justice Holt ſays, 3d:—"The prisoner (i. e. Tooley) in this caſe had ſufficient provocation; for if one be imprifoned upon an unlawful authority, it is a ſufficient provocation to all people out of com-

passion; and where the liberty of the subject is invaded, it is a provocation to all the subjects of England, &c.; and sure a man ought to be concerned for Magna Charta and the laws; and if any one, against the law, imprisons a man, he is an offender against Magna Charta."

I am not insensible of Sir Michael Foster's observations on these cases, but apprehend they do not invalidate the authority of them as far as I now apply them to the purposes of my argument. If a stranger, a mere fellow-subject, may interpose to defend the liberty, he may, too, defend the life of another individual. But, according to the evidence, some imprudent people, before the sentry, proposed to take him off his post; others threatened his life; and intelligence of this was carried to the main-guard before any of the prisoners turned out. They were then ordered out to relieve the sentry; and any of our fellow-citizens might lawfully have gone upon the same errand. They were, therefore, a lawful assembly.

I have but one point of law more to consider, and that is this:—In the case before you I do not pretend to prove that every one of the unhappy persons slain were concerned in the riot. The authorities read to you just now, say it would be endless to prove whether every person that was present and in a riot was concerned in planning the first enterprise or not. Nay, I believe it but justice to say some were perfectly innocent of the occasion. I have reason to suppose that one of them was Mr. Maverick. He was a very worthy young man, as he has been represented to me, and had no concern in the rioters' proceedings of that night; and I believe the same may be said in favor of one more at least, Mr. Caldwell, who was slain; and, therefore, many people may think, that as he and perhaps another was innocent, therefore innocent blood having been shed, that must be expiated by the death of somebody or other. I take notice of this, because one gentleman nominated by the sheriff for a jurymen upon this trial, because he had said he believed Captain Preston was innocent, but innocent blood had been shed, and therefore somebody ought to be hanged for it, which he thought was indirectly giving his opinion in this cause. I am afraid many other persons have formed such an opinion. I do not take it to be a rule, that where innocent blood is shed, the person must die. In the instance of the Frenchmen on the Plains of Abraham, they were innocent, fighting for their king and country; their blood is as innocent as any. There may be multitudes killed, when innocent blood is shed on all sides; so that it is not an invariable rule. I will put a case, in which, I dare say, all will agree with me. Here are two persons, the father and the son, go out a hunting. They take different roads. The father hears a rushing among the bushes, takes it to be game, fires, and kills his son, through a mistake. Here is innocent blood

shed, but yet nobody will say the father ought to die for it. So that the general rule of law is, that whenever one person has a right to do an act, and that act, by any accident, takes away the life of another, it is excusable. It bears the same regard to the innocent as to the guilty. If two men are together, and attack me, and I have a right to kill them, I strike at them, and by mistake strike a third, and kill him, as I had a right to kill the first, my killing the other will be excusable, as it happened by accident. If I, in the heat of passion, aim a blow at the person who has assaulted me, aiming at him, I kill another person, it is but manslaughter. Foster, 261, § 8:—"If an action unlawful in itself be done deliberately, and with intention of mischief, or great bodily harm to particulars, or of mischief indiscriminately, fall it where it may, and death ensues, against or beside the original intention of the party, it will be murder. But if such mischievous intention doth not appear, which is matter of fact, and to be collected from circumstances, and the act was done heedlessly and inconsiderately, it will be manslaughter, not accidental death; because the act upon which death ensued was unlawful."

Supposing, in this case, the mulatto man was the person who made the assault; suppose he was concerned in the unlawful assembly, and this party of soldiers endeavoring to defend themselves against him, happened to kill another person, who was innocent—though the soldiers had no reason, that we know of, to think any person there, at least of that number who were crowding about them, innocent; they might, naturally enough, presume all to be guilty of the riot and assault, and to come with the same design;—I say, if on firing on those who were guilty, they accidentally killed an innocent person, it was not their fault. They were obliged to defend themselves against those who were pressing upon them. They are not answerable for it with their lives; for on supposition it was justifiable or excusable to kill Attacks, or any other person, it will be equally justifiable or excusable, if in firing at him they killed another, who was innocent; or if the provocation was such as to mitigate the guilt to manslaughter, it will equally mitigate the guilt, if they killed an innocent man undesignedly, in aiming at him who gave the provocation, according to Judge Foster,—and, as this point is of such consequence, I must produce some more authorities for it,—1 Hawkins, 84:—"Also, if a third person accidentally happen to be killed by one engaged in a combat with another, upon a sudden quarrel, it seems that he who killed him is guilty of manslaughter only," &c. H. H. P. C., 442, to the same point; and 1 H. H. P. C., 484, and 4 Black, 27.

I shall now consider one question more, and that is concerning provocation.\* We have

\* The distinction between murder and manslaughter is more easily confounded than many other distinctions of law

hitherto been considering self-defence and how far persons may go in defending themselves against aggressors, even by taking away their lives, and now proceed to consider such provocations as the law allows to mitigate or extenuate the guilt of killing, where it is not justifiable or excusable. An assault and battery committed upon a man in such a manner as not to endanger his life, is such a provocation as the law allows to reduce killing down to the crime of manslaughter. Now the law has been made on more considerations than we are capable of making at present; the law considers a man as capable of bearing any thing and every thing but blows. I may reproach a man as much as I please; I may call him a thief, robber, traitor, scoundrel, coward, lobster, bloody back, &c., and if he kills me it will be murder, if nothing else but words precede; but if from giving him such kind of language I proceed to take him by the nose, or flip him on the forehead, that is an assault; that is a blow. The law will not oblige a man to stand still and bear it; there is the distinction. Hands off; touch me not! As soon as you touch me, if I run you through the heart it is but manslaughter. The utility of this distinction, the more you think of it, the more you will be satisfied with it. It is an assault whenever a blow is struck,

let it be ever so slight, and sometimes even without a blow. The law considers man as frail and passionate. When his passions are touched, he will be thrown off his guard, and therefore the law makes allowances for this frailty—considers him as in a fit of passion, not having the possession of his intellectual faculties, and therefore does not oblige him to measure out his blows with a yard-stick, or weigh them in a scale. Let him kill with a sword, gun or hedge stake, it is not murder, but only manslaughter. Keyling's Report, 135. *Regina versus Mawgrige*. "Rules supported by authority and general consent, showing what are always allowed to be sufficient provocations. First, if one man upon any words shall make an assault upon another, either by pulling him by the nose or flipping him on the forehead, and he that is so assaulted shall draw his sword and immediately run the other through, that is but manslaughter, for the peace is broken by the person killed, and with an indignity to him that received the assault. Besides, he that was so affronted, might reasonably apprehend that he that treated him in that manner might have some further design upon him." So that here is the boundary, when a man is assaulted and kills in consequence of that assault, it is but manslaughter. I will just read as I go along

relative to homicide. And many persons among us seem to think that the punishment of death ought to be inflicted upon all voluntary killing one private man by another, whether done suddenly or deliberately, coolly or in anger. These received notions may have originated partly from a false construction of the general precept to Noah,—"Whoso sheddeth man's blood, by man shall his blood be shed." . . . But may not some of these mistaken notions have been derived from law books? We find the distinction between murder and manslaughter sometimes attributed to the peculiar benignity of the English law, and it is sometimes represented that the particular fact which the law of England calls manslaughter and indulges with clergy, is punished with death in all other laws.—Vide *Observations on the Statutes*, page 54.

By the law of Scotland, there is no such thing as manslaughter, nor by the civil law; and therefore a criminal indicted for murder, under the statute of Henry the Eighth, where the judges proceed by the rules of the civil law, must either be found guilty of the murder, or be acquitted. . . . And in another place, *Observations on the Statutes*, 422, note (Z). I have before observed, that by the civil law, as well as by the law of Scotland, there is no such offence as what is with us termed manslaughter. Sir Michael Foster, 288. If taking general verdicts of acquittal, in plain cases of death, per infortunium, &c., deserveth the name of a deviation, it is far short of what is constantly practised at an Admiralty sessions, under 28 H. 8, with regard to offences not ousted of clergy by particular statutes, which, had they been committed at land, would have been intitled to clergy. . . . In these cases the jury is constantly directed to acquit the prisoner; because the marine law doth not allow of clergy in any case, and therefore in an indictment for murder on the high seas, if the fact comes out upon evidence to be no more than manslaughter, supposing it to have been committed at land, the prisoner is constantly acquitted. 2 Lord Raymond, 1496. His lordship says: "From these cases it

appears, that though the law of England is so far peculiarly favorable (I use the word peculiarly, because I know of no other law that makes such a distinction between murder and manslaughter) as to permit the excess of anger and passion (which the man ought to keep under and govern) in some instances to extenuate the greatest of private injuries, as the taking away a man's life is; yet, in these cases, it must be such a passion as for the time deprives him of his reasoning faculties.

I shall not enter into any inquiry, how far the Admiralty Sessions in England, or a special Court of Admiralty in America ought to proceed by the rules of civil law, though it is a question of immense importance to Americans; but must beg leave to observe that, though the distinction between murder and manslaughter is not found in words in the civil law, yet the distinction between homicide, with deliberation and without deliberation, and on a sudden provocation, is well known in that law; and the former is punished with death, the latter with some inferior corporal punishment, at the discretion of the judges.

Indeed, the civil law is more favorable and indulgent to sudden anger and resentment than the common law, and allows many things to be a provocation sufficient to exempt the person killing from the *pena ordinaria*, which is death, which the common law considers as a slight provocation, or none at all.

Cod. Lib. 9. Tit. 16, note 46. Gail, page 508. Maranta, p. 49. Par. 4. Dist. I. 77.

It should seem from these authorities, that the lenity and indulgence of the laws of England, is not unnatural, extraordinary, or peculiar, and instead of being unknown in the civil law, that it is carried much further in many respects than in the common law. And indeed it seems that the like indulgence was permitted in the Jewish law, though it has been so often represented as peculiar to the English law, that many persons seem to think it unwarrantable and tending to leave the guilt of blood upon the land.

the definition of an assault. 1 Hawkins, chap. 62, § 1. "An assault is an attempt or offer, with force or violence, to do a corporal hurt to another, as by striking at him with or without a weapon, or presenting a gun at him at such a distance to which the gun will carry, or pointing a pitchfork at him, or by any other such like act done in an angry, threatening manner, &c.; but no words can amount to an assault." Here is the definition of an assault, which is a sufficient provocation to soften killing down to manslaughter. 1 Hawkins, chap. 31, § 36. "Neither can he be thought guilty of a greater crime than manslaughter, who, finding a man in bed with his wife, or being actually struck by him, or pulled by the nose or filiped upon the forehead, immediately kills him, or in the defence of his person from an unlawful arrest, or in the defence of his house from those who, claiming a title to it, attempt forcibly to enter it, and to that purpose shoot at it," &c. Every snowball, oyster-shell, cake of ice or bit of cinder, that was thrown that night at the sentinel, was an assault upon him; every one that was thrown at the party of soldiers, was an assault upon them, whether it hit any of them or not. I am guilty of an assault if I present a gun at any person; whether I shoot at him or not, it is an assault, and if I insult him in that manner and he shoots me, it is but manslaughter. Foster, 295, 6. "To what I have offered with regard to sudden encounters, let me add, that the blood already too much heated, kindleth afresh at every pass or blow. And in the tumult of the passions, in which mere instinct self-preservation has no inconsiderable share, the voice of reason is not heard; and therefore the law, in condescension to the infirmities of flesh and blood, doth extenuate the offence." Insolent, scurrilous or slanderous language, when it precedes an assault, aggravates it. Foster, 316. "We all know that words of reproach, how grating and offensive soever, are in the eye of the law no provocation in the case of voluntary homicide; and yet every man who hath considered the human frame, or but attended to the workings of his own heart, knoweth that affronts of that kind pierce deeper and stimulate in the veins more effectually than a slight injury done to a third person, though under color of justice, possibly can." I produce this to show the assault in this case was aggravated by the scurrilous language which preceded it. Such words of reproach stimulate in the veins and exasperate the mind, and no doubt if an assault and battery succeeds them, killing under such provocation is softened to manslaughter, but killing without such provocation makes it murder.

On the next day, Mr. Adams continued:

I yesterday afternoon produced from the best authorities those rules of law which must govern all cases of homicide, particularly that which is now before you; it now remains to consider the evidence, and see whether any

thing has occurred that may be compared to the rules read to you; and I will not trouble myself nor you with labored endeavors to be methodical. I shall endeavor to make some few observations on the testimonies of the witnesses, such as will place the facts in a true point of light, with as much brevity as possible; but I suppose it would take me four hours to read to you (if I did nothing else but read) the minutes of evidence that I have taken in this trial. In the first place, the gentleman who opened this cause has stated to you with candor and precision the evidence of the identity of the persons.

The witnesses are confident that they know the prisoners at the bar, and that they were present that night, and of the party. However, it is apparent that witnesses are liable to make mistakes, by a single example before you. Mr. Bass, who is a very honest man, and of good character, swears positively that the tall man, Warren, stood on the right that night, and was the first that fired; and I am sure you are satisfied by this time by many circumstances that he is totally mistaken in this matter. This you will consider at your leisure. The witnesses in general did not know the faces of these persons before; very few of them knew the names of them before; they only took notice of the faces that night. How much certainty there is in this evidence, I leave you to determine.

There does not seem to me to be any thing very material in the testimony of Mr. Aston, except to the identity of McCauley, and he is the only witness to that. If you can be satisfied in your own minds, without a doubt, that he knew McCauley so well as to be sure, you will believe he was there.

The next witness is Bridgham; he says he saw the tall man, Warren, but saw another man belonging to the same regiment, soon after, so like him, as to make him doubt whether it was Warren or not; he thinks he saw the Corporal, but is not certain. He says he was at the corner of the Custom House. This you will take notice of. Other witnesses swear he was the remotest man of all from him who fired first, and there are other evidences who swear the left man did not fire at all. If Wemms did not discharge his gun at all, he could not kill any of the persons, therefore he must be acquitted on the fact of killing; for an intention to kill is not murder or manslaughter, if not carried into execution. The witness saw numbers of things thrown, and he saw plainly sticks strike the guns. About a dozen persons with sticks, gave three cheers and surrounded the party, and struck the guns with their sticks several blows. This is a witness for the Crown, and his testimony is of great weight for the prisoners; he gives his testimony very sensibly and impartially. He swears positively, that he not only saw ice or snow thrown, but saw the guns struck several times. If you believe this witness, of whose credibility you are wholly

the judges, as you are of every other; if you do not believe him, there are many others who swear to circumstances in favor of the prisoners. It should seem impossible you should disbelieve so great a number, and of Crown witnesses, too, who swear to such variety of circumstances that fall in with one another so naturally to form our defence. This witness swears positively there were a dozen of persons with clubs, surrounded the party. Twelve sailors with clubs were by much an overmatch to eight soldiers, chained there by the order and command of their officer, to stand in defence of the sentry. Not only so, but under an oath to stand there, i. e. to obey the lawful command of their officer, as much, gentlemen of the jury, as you are under oath to determine this cause by law and evidence. Clubs they had not, and they could not defend themselves with their bayonets against so many people. It was in the power of the sailors to kill one half or the whole of the party, if they had been so disposed. What had the soldiers to expect, when twelve persons, armed with clubs, (sailors too, between whom and soldiers there is such an antipathy that they fight as naturally, when they meet, as the elephant and rhinoceros,) were daring enough, even at the time when they were loading their guns, to come up with their clubs and smite on their guns. What had eight soldiers to expect from such a set of people? Would it have been a prudent resolution in them, or in any body in their situation, to have stood still and see if the sailors would knock their brains out or not? Had they not all the reason in the world to think, that as they had done so much, they would proceed further? Their clubs were as capable of killing as a ball. A hedge stake is known in the law books as a weapon of death as much as a sword, bayonet or musket. He says the soldiers were loading their guns, when the twelve surrounded them. The people went up to them within the length of their guns, and before the firing. Besides all this, he swears they were called cowardly rascals, and dared to fire. He says these people were all dressed like sailors, and I believe that by and by you will find evidence enough to satisfy you these were some of the persons that came out of Dock Square, after making the attack on Murray's barracks, and who had been arming themselves with sticks from the butchers' stalls and cord wood piles, and marched up round Cornhill under the command of Attacks. All the bells in town were ringing; the rattling of the blows upon the guns he heard, and swears it was violent. This corroborates the testimony of James Bailey, which will be considered presently. Some witnesses swear a club struck a soldier's gun; Bailey swears a man struck a soldier and knocked him down, before he fired; "the last man that fired levelled at a lad, and moved his gun as the lad ran." You will consider that an intention to kill is not murder. If a man lays poison in the way of another, and with an ex-

press intention that he should take it up and die of it, it is not murder. Suppose that soldier had malice in his heart, and was determined to murder that boy if he could; yet the evidence clears him of killing the boy. I say, admit he had malice in his heart, yet it is plain he did not kill him, or any body else, and if you believe one part of the evidence, you must believe the other, and if he had malice, that malice was ineffectual. I do not recollect any evidence that ascertains who it was that stood the last man but one upon the left. Admitting he discovered a temper ever so wicked, cruel and malicious, you are to consider his ill temper is not imputable to another. No other had any intention of this deliberate kind; the whole transaction was sudden. There was but a very short space of time between the first gun and the last. When the first gun was fired, the people fell in upon the soldiers and laid on with their weapons with more violence, and this served to increase the provocation, and raised such a violent spirit of revenge in the soldiers as the law takes notice of, and makes some allowance for, and in that fit of fury and madness I suppose he aimed at the boy.

The next witness is Dodge. He says there were fifty people near the soldiers pushing at them. Now the witness before says there were twelve sailors with clubs; but now here are fifty more aiding and abetting of them, ready to relieve them in case of need. Now what could the people expect? It was their business to have taken themselves out of the way. Some prudent people by the Town House told them not to meddle with the guard; but you hear nothing of this from these fifty people. No; instead of that, they were huzzaing and whistling, crying—damn you, fire! why don't you fire? So that they were actually assisting these twelve sailors that made the attack. He says the soldiers were pushing at the people to keep them off; ice and snow were thrown, and "I heard ice rattle on their guns." There were some clubs thrown from a considerable distance across the street. This witness swears he saw snowballs thrown close before the party, and he took them to be thrown on purpose. He saw oyster-shells likewise thrown. Mr. Langford, the watchman, is more particular in his testimony, and deserves a very particular consideration, because it is intended by the counsel for the Crown that his testimony shall distinguish Killroy from the rest of the prisoners, and exempt him from those pleas of justification, excuse or extenuation, which we rely upon for the whole party; because he had previous malice, and they would from hence conclude he aimed at a particular person. You will consider all the evidence with regard to that by itself.

Hemmingway, the sheriff's coachman, swears he knew Killroy, and that he heard him say he would never miss an opportunity of firing upon the inhabitants. This is to prove that Killroy had preconceived malice in his heart, not, in

deed, against the unhappy persons who were killed, but against the inhabitants in general—that he had the spirit, not only of a Turk or an Arab, but of the devil. But admitting that this testimony is literally true, and that he had all the malice they would wish to prove, yet, if he was assaulted that night, and his life in danger, he had a right to defend himself, as well as another man. If he had malice before, it does not take away from him the right of defending himself against any unjust aggressor. But it is not at all improbable that there was some misunderstanding about these loose expressions. Perhaps the man had no thoughts of what his words might import. Many a man in his cups or in anger, which is a short fit of madness, hath uttered the rashest expressions, who had no such savage disposition in general. So that there is but little weight in expressions uttered at a kitchen fire, before a maid and a coachman, where he might think himself at liberty to talk as much like a bully, a fool, and a madman as he pleased, and that no evil would come of it. Strictly speaking, he might mean no more than this: that he would not miss an opportunity of firing on the inhabitants if he was attacked by them in such a manner as to justify it. Soldiers have sometimes avoided opportunities of firing, when they would have been justified if they had fired. I would recommend to them to be tender, by all means—nay, let them be cautious, at their peril. But still what he said amounts in strictness to no more than this:—"If the inhabitants make an attack on me, I will not bear from them what I have done already;" or "I will bear no more than what I am obliged by law to bear." No doubt it was under the fret of his spirits, the indignation, mortification, grief, and shame, that he had suffered a defeat at the Rope-walks. It was just after an account of an affray was published here, betwixt the soldiers and inhabitants at New York. There was, a little before the 5th of March, much noise in this town, and a pompous account in the newspapers of a victory obtained by the inhabitants there over the soldiers, which, doubtless, excited the resentment of the soldiers here, as well as exultations among some sorts of the inhabitants. And the ringing of the bells here was, probably, copied from New York—a wretched example, in this and in two other instances, at least. The defeat of the soldiers at the Rope-walks was about that time, too; and if he did after that use such expressions, it ought not to weigh too much in this case. It can scarcely amount to proof that he harbored any settled malice against the people in general. Other witnesses are introduced, to show that Killroy had, besides his general ill-will against every body, particular malice against Mr. Gray, whom he killed, as Langford swears.

Some of the witnesses have sworn that Gray was active in the battle at the Rope-walks, and that Killroy was once there; from whence the counsel for the Crown would infer that Kill-

roy, in King street, on the 5th of March, in the night, knew Gray, whom he had seen at the Rope-walks before, and took that opportunity to gratify his preconceived malice. But if this is all true, it will not take away from him his justification, excuse, or extenuation, if he had any. The rule of the law is, if there has been malice between two, and at a distant time afterwards they meet, and one of them assaults the other's life, or only assaults him, and he kills in consequence of it, the law presumes the killing was in self-defence, or upon the provocation, not on account of the antecedent malice. If, therefore, the assault upon Killroy was so violent as to endanger his life, he had as good a right to defend himself, as much as if he never had before conceived any malice against the people in general, or Mr. Gray in particular. If the assault upon him was such as to amount only to a provocation, not to a justification, his crime will be manslaughter only. However, it does not appear that he knew Mr. Gray; none of the witnesses pretend to say that he knew him, or that he ever saw him. It is true they were both at the Rope-walks at one time, but there were so many combatants on each side, that it is not even probable that Killroy should know them all; and no witness says there was any rencontre there between them two. Indeed, to return to Mr. Langford's testimony, he says he did not perceive Killroy to aim at Gray more than at him, but he says expressly he did not aim at Gray. Langford says, "Gray had no stick; was standing with his arms folded up." This witness is, however, most probably mistaken in this matter, and confounds one time with another—a mistake which has been made by many witnesses in this case, and considering the confusion and terror of the scene, is not to be wondered at.

Witnesses have sworn to the condition of Killroy's bayonet—that it was bloody the morning after the 5th of March. The blood they saw, if any, might be occasioned by a wound given by some of the bayonets in the affray—possibly in Mr. Fosdick's arm—or it might happen in the manner mentioned by my brother before. One bayonet, at least, was struck off, and it might fall where the blood of some person slain afterwards flowed. It would be doing violence to every rule of law and evidence, as well as to common sense and the feelings of humanity, to infer from the blood on the bayonet, that it had been stabbed into the brains of Mr. Gray, after he was dead, and that by Killroy himself, who had killed him.

Young Mr. Davis swears that he saw Gray that evening, a little before the firing; that he had a stick under his arm, and said he would go to the riot. "I am glad of it (that is, that there was a rumup), I will go and have a slap at them, if I lose my life." And when he was upon the spot, some witnesses swear he did not act that peaceable, inoffensive part which Langford thinks he did. They swear they thought him in liquor; that he ran about, clapping



several people on the shoulders, saying, "Don't run away—they dare not fire!" Langford goes on:—"I saw twenty or five and twenty boys about the sentinel, and I spoke to him, and bid him not be afraid." How came the watchman Langford to tell him not to be afraid? Does not this circumstance prove that he thought there was danger, or, at least, that the sentinel, in fact, was terrified, and did think himself in danger? Langford goes on:—"I saw about twenty or five and twenty boys—that is, young shavers." We have been entertained with a great variety of phrases, to avoid calling this sort of people a mob. Some call them shavers, some call them geniuses. The plain English is, gentlemen, most probably, a motley rabble of saucy boys, negroes and mulattoes, Irish Teagues, and outlandish jack-tars. And why we should scruple to call such a set of people a mob I cannot conceive, unless the name is too respectable for them. The sun is not about to stand still or go out, nor the rivers to dry up, because there was a mob in Boston, on the 5th of March, that attacked a party of soldiers. Such things are not new in the world, nor in the British dominions, though they are comparatively rarities and novelties in this town. Carr, a native of Ireland, had often been concerned in such attacks; and indeed, from the nature of things, soldiers quartered in a populous town will always occasion two mobs, where they prevent one. They are wretched conservators of the peace.

Langford "heard the rattling against the guns, but saw nothing thrown." This rattling must have been very remarkable, as so many witnesses heard it, who were not in a situation to see what caused it. Those things which hit the guns made a noise; those which hit the soldiers' persons did not. But when so many things were thrown, and so many hit their guns, to suppose that none struck their persons is incredible. Langford goes on: "Gray struck me on the shoulder, and asked me, What is to pay? I answered, I don't know, but I believe something will come of it by and by." Whence could this apprehension of mischief arise, if Langford did not think the assault, the squabble, the affray, was such as would provoke the soldiers to fire? "A bayonet went through my great coat and jacket." Yet the soldier did not step out of his place. This looks as if Langford was nearer to the party than became a watchman.

Forty or fifty people around the soldiers, and more coming from Quaker lane as well as the other lanes. The soldiers heard all the bells ringing, and saw people coming from every point of the compass to the assistance of those who were insulting, assaulting, beating, and abusing of them. What had they to expect but destruction, if they had not thus early taken measures to defend themselves?

Brewer saw Killroy, &c., saw Dr. Young, &c. "He said the people had better go home." It was an excellent advice. Happy for some of

them had they followed it; but it seems all ad vice was lost on these persons. They would hearken to none that was given them in Dock Square, Royal Exchange lane, or King street. They were bent on making this assault and on their own destruction.

The next witness that knows any thing was James Bailey. He saw Carrol, Montgomery, and White; he saw some around the sentry, heaving pieces of ice large and hard enough to hurt any man—as big as your fist. One question is, whether the sentinel was attacked or not. If you want evidence of an attack upon him, there is enough of it. Here is a witness, an inhabitant of the town—surely no friend to the soldiers, for he was engaged against them at the rope-walk. He says he saw twenty or thirty around the sentry, pelting with cakes of ice as big as one's fist. Certainly, cakes of ice of this size may kill a man, if they happen to hit some part of the head. So that here was an attack upon the sentinel, the consequence of which he had reason to dread, and it was prudent in him to call for the main guard. He retreated as far as he could. He attempted to get into the Custom House, but could not. Then he called to the guard, and he had a good right to call for their assistance. "He did not know, he told the witness, what was the matter, but he was afraid there would be mischief by and by;" and well he might, with so many shavers and geniuses around him, capable of throwing such dangerous things. Bailey swears Montgomery fired the first gun, and that he stood at the right, "the next man to me; I stood behind him," &c. This witness certainly is not prejudiced in favor of the soldiers. He swears he saw a man come up to Montgomery with a club and knock him down before he fired, and that he not only fell himself, but his gun flew out of his hand, and as soon as he rose he took it up and fired. If he was knocked down on his station, had he not reason to think his life in danger? or did it not raise his passions and put him off his guard, so that it cannot be any more than manslaughter?

When the multitude was shouting and huzzing, and threatening life, the bells all ringing, the mob whistling, screaming, and rending like an Indian yell, the people from all quarters throwing every species of rubbish they could pick up in the streets, and some who were quite on the other side of the street throwing clubs at the whole party, Montgomery in particular, smote with a club and knocked down, and as soon as he could rise and take up his firelock, another club from afar struck his breast or shoulder, what could he do? Do you expect he should behave like a stoic philosopher, lost in apathy? Patient as Epictetus while his master was breaking his legs with a cudgel? It is impossible you should find him guilty of murder. You must suppose him divested of all human passions, if you don't think him, at the least, provoked, thrown off his guard, and into the furor brevis by such treatment as this.



Bailey "saw the mulatto, seven or eight minutes before the firing, at the head of twenty or thirty sailors in Cornhill, and he had a large cord-wood stick." So that this Attucks, by this testimony of Bailey, compared with that of Andrew and some others, appears to have undertaken to be the hero of the night, and to lead this army with banners. To form them in the first place in Dock Square, and march them up to King street with their clubs. They passed through the main street up to the main guard in order to make the attack. If this was not an unlawful assembly, there never was one in the world. Attucks, with his myrmidons, comes around Jackson's corner and down to the party by the sentry-box. When the soldiers pushed the people off, this man, with his party, cried, Do not be afraid of them; they dare not fire; kill them! kill them! knock them over! And he tried to knock their brains out. It is plain, the soldiers did not leave their station, but cried to the people, Stand off! Now, to have this reinforcement coming down, under the command of a stout mulatto fellow, whose very looks was enough to terrify any person, what had not the soldiers then to fear? He had hardiness enough to fall in upon them, and with one hand took hold of a bayonet, and with the other knocked the man down. This was the behavior of Attucks, to whose mad behavior, in all probability, the dreadful carnage of that night is chiefly to be ascribed. And it is in this manner this town has been often treated. A Carr from Ireland, and an Attucks from Framingham, happening to be here, shall sally out upon their thoughtless enterprises at the head of such a rabble of negroes, &c., as they can collect together, and then there are not wanting persons to ascribe all their doings to the good people of the town.

Mr. ADAMS proceeded to a minute consideration of every witness produced on the Crown side, and endeavored to show, from the evidence on that side, which could not be contested by the counsel for the Crown, that the assault upon the party was sufficiently dangerous to justify the prisoners; at least, that it was sufficiently provoking to reduce to manslaughter the crime, even of the two who were supposed to be proved to have killed. He then proceed-

ed to consider the testimonies of the witnesses for the prisoners, and concluded:

I will enlarge no more on the evidence, but submit it to you. Facts are stubborn things, and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence; nor is the law less stable than the fact. If an assault was made to endanger their lives, the law is clear: they had a right to kill in their own defence. If it was not so severe as to endanger their lives, yet if they were assaulted at all, struck and abused by blows of any sort—by snowballs, oyster-shells, cinders, clubs, or sticks of any kind—this was a provocation for which the law reduces the offence of killing down to manslaughter, in consideration of those passions in our nature which cannot be eradicated. To your candor and justice I submit the prisoners and their cause.

The law in all vicissitudes of government, fluctuations of the passions, or flights of enthusiasm, will preserve a steady, undeviating course; it will not bend to the uncertain wishes, imaginations, and wanton tempers of men. To use the words of a great and worthy man, a patriot and a hero, an enlightened friend of mankind, and a martyr to liberty—I mean Algernon Sidney, who, from his earliest infancy, sought a tranquil retirement under the shadow of the tree of liberty, with his tongue, his pen, and his sword. "The law (says he) no passion can disturb. 'Tis void of desire and fear, lust and anger. 'Tis *mens sine affectu*; written reason; retaining some measure of the divine perfection. It does not enjoin that which pleases a weak, frail man, but without any regard to persons, commands that which is good and punishes evil in all, whether rich or poor, high or low. 'Tis deaf, inexorable, inflexible." On the one hand, it is inexorable to the cries and lamentations of the prisoners; on the other, it is deaf, deaf as an adder, to the clamors of the populace.\*

\* After Mr. Adams had concluded, the cause was finished by Robert Treat Paine, on the part of the Crown. "In his argument, he endeavored to settle the principal facts, by comparing the evidence, as well on the part of the Crown as of the prisoners; and also to show that the many undeniable rules of law which had been produced, did not apply to the cause at bar," &c. No report of Mr. Paine's speech was taken at the time of the trial.—*Note appended to Mr. Adams' Speech.*

## INAUGURAL ADDRESS.

THIS address was delivered by Mr. Adams, before both Houses of Congress, on assuming the Presidency of the United States, on the 4th of March, 1797 :—

When it was first perceived, in early times, that no middle course for America remained, between unlimited submission to a foreign legislature and a total independence of its claims, men of reflection were less apprehensive of danger from the formidable power of fleets and armies they must determine to resist, than from those contests and dissensions which would certainly arise concerning the forms of government to be instituted over the whole, and over the parts, of this extensive country. Relying, however, on the purity of their intentions, the justice of their cause, and the integrity and intelligence of the people, under an overruling Providence, which had so signally protected this country from the first; the representatives of this nation, then consisting of little more than half its present numbers, not only broke to pieces the chains which were forging, and the rod of iron that was lifted up, but frankly cut asunder the ties which had bound them, and launched into an ocean of uncertainty.

The zeal and ardor of the people during the revolutionary war, supplying the place of government, commanded a degree of order, sufficient, at least, for the temporary preservation of society. The confederation, which was early felt to be necessary, was prepared from the models of the Batavian and Helvetic confederacies, the only examples which remain, with any detail and precision, in history, and certainly the only ones which the people at large had ever considered. But, reflecting on the striking difference, in so many particulars, between this country and those, where a courier may go from the seat of government to the frontier in a single day, it was then certainly foreseen by some, who assisted in Congress at the formation of it, that it could not be durable.

Negligence of its regulations, inattention to its recommendations, if not disobedience to its authority, not only in individuals, but in States, soon appeared with their melancholy consequences. Universal languor, jealousies, rivalries of States, decline of navigation and commerce, discouragement of necessary manufactures, universal fall in the value of lands and their produce, contempt of public and private faith, loss of consideration and credit with foreign nations; and, at length, in discontents, animosities, combinations, partial conventions, and insurrection, threatening some great national calamity.

In this dangerous crisis, the people of America were not abandoned by their usual good

sense, presence of mind, resolution, or integrity. Measures were pursued to concert a plan to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty. The public disquisitions, discussions, and deliberations issued in the present happy constitution of government.

Employed in the service of my country abroad during the whole course of these transactions, I first saw the constitution of the United States in a foreign country. Irritated by no literary altercation, animated by no public debate, heated by no party animosity, I read it with great satisfaction, as the result of good heads, prompted by good hearts; as an experiment better adapted to the genius, character, situation, and relations of this nation and country than any which had ever been proposed or suggested. In its general principles and great outlines, it was conformable to such a system of government as I had ever most esteemed; and in some States, my own native State in particular, had contributed to establish. Claiming a right of suffrage in common with my fellow-citizens in the adoption or rejection of a constitution, which was to rule me and my posterity, as well as them and theirs, I did not hesitate to express my approbation of it on all occasions, in public and in private. It was not then nor has been since any objection to it, in my mind, that the Executive and Senate were not more permanent. Nor have I entertained a thought of promoting any alteration in it, but such as the people themselves, in the course of their experience, should see and feel to be necessary or expedient, and by their representatives in Congress and the State Legislatures, according to the constitution itself, adopt and ordain.

Returning to the bosom of my country, after a painful separation from it for ten years, I had the honor to be elected to a station under the new order of things; and I have repeatedly laid myself under the most serious obligations to support the constitution. The operation of it has equalled the most sanguine expectations of its friends; and from an habitual attention to it, satisfaction in its administration, and delight in its effects upon the peace, order, prosperity, and happiness of the nation, I have acquired an habitual attachment to it, and veneration for it.

What other form of government, indeed, can so well deserve our esteem and love?

There may be little solidity in an ancient idea that congregations of men into cities and nations are the most pleasing objects in the sight of superior intelligences; but this is very certain, that to a benevolent human mind there can be no spectacle presented by any nation

more pleasing, more noble, majestic, or august, than an assembly like that which has so often been seen in this and the other chamber of Congress—a government in which the executive authority, as well as that of all the branches of the legislature, are exercised by citizens, selected at regular periods by their neighbors, to make and execute laws for the general good. Can any thing essential, any thing more than mere ornament and decoration, be added to this by robes or diamonds? Can authority be more amiable or respectable, when it descends from accidents or institutions established in remote antiquity, than when it springs fresh from the hearts and judgments of an honest and enlightened people? For it is the people only that are represented; it is their power and majesty that is reflected, and only for their good, in every legitimate government, under whatever form it may appear. The existence of such a government as ours for any length of time, is a full proof of a general dissemination of knowledge and virtue throughout the whole body of the people. And what object of consideration, more pleasing than this, can be presented to the human mind? If national pride is ever justifiable or excusable, it is when it springs, not from power or riches, grandeur or glory, but from conviction of national innocence, information, and benevolence.

In the midst of these pleasing ideas, we should be unfaithful to ourselves if we should ever lose sight of the danger to our liberties—if any thing partial or extraneous should infect the purity of our free, fair, virtuous, and independent elections. If an election is to be determined by a majority of a single vote, and that can be procured by a party through artifice or corruption, the government may be the choice of a party, for its own ends, not of the nation for the national good. If that solitary suffrage can be obtained by foreign nations, by flattery or menaces, by fraud or violence, by terror, intrigue, or venality, the government may not be the choice of the American people, but of foreign nations. It may be foreign nations who govern us, and not we, the people, who govern ourselves; and candid men will acknowledge that, in such cases, choice would have little advantage to boast of over lot or chance.

Such is the amiable and interesting system of government (and such are some of the abuses to which it may be exposed) which the people of America have exhibited to the admiration and anxiety of the wise and virtuous of all nations for eight years, under the administration of a citizen, who, by a long course of great actions, regulated by prudence, justice, temperance, and fortitude, conducting a people inspired with the same virtues, and animated with the same ardent patriotism and love of liberty, to independence and peace, to increasing wealth and unexampled prosperity, has merited the gratitude of his fellow-citizens, commanded the highest praises of foreign na-

tions, and secured immortal glory with posterity.

In that retirement, which is his voluntary choice, may he long live to enjoy the delicious recollection of his services—the gratitude of mankind; the happy fruits of them to himself and the world, which are daily increasing, and that splendid prospect of the future fortunes of his country, which is opening from year to year. His name may be still a rampart, and the knowledge that he lives, a bulwark against all open or secret enemies of his country's peace.

This example has been recommended to the imitation of his successors, by both Houses of Congress, and by the voice of the legislatures and the people, throughout the nation.

On this subject it might become me better to be silent, or to speak with diffidence; but as something may be expected, the occasion, I hope, will be admitted as an apology, if I venture to say, that if a preference, upon principle, of a free Republican government, formed upon long and serious reflection, after a diligent and impartial inquiry after truth; if an attachment to the constitution of the United States, and a conscientious determination to support it, until it shall be altered by the judgments and wishes of the people, expressed in the mode prescribed in it; if a respectful attention to the constitutions of the individual States, and a constant caution and delicacy towards the State governments; if an equal and impartial regard to the rights, interests, honor, and happiness of all the States in the Union, without preference or regard to a northern or southern, eastern or western position, their various political opinions on essential points, or their personal attachments; if a love of virtuous men, of all parties and denominations; if a love of science and letters, and a wish to patronize every rational effort to encourage schools, colleges, universities, academies, and every institution for propagating knowledge, virtue, and religion among all classes of the people, not only for their benign influence on the happiness of life, in all its stages and classes, and of society in all its forms, but as the only means of preserving our constitution from its natural enemies, the spirit of sophistry the spirit of party, the spirit of intrigue, profligacy, and corruption, and the pestilence of foreign influence, which is the angel of destruction to elective governments; if a love of equal laws, of justice and humanity, in the interior administration; if an inclination to improve agriculture, commerce, and manufactures for necessity, convenience, and defence; if a spirit of equity and humanity towards the aboriginal nations of America, and a disposition to ameliorate their condition, by inclining them to be more friendly to us, and our citizens to be more friendly to them; if an inflexible determination to maintain peace and inviolable faith with all nations, and that system of neutrality and impartiality among the belligerent powers of Europe which has been adopted by the gov-

ernment, and so solemnly sanctioned by both Houses of Congress, and applauded by the legislatures of the States and the public opinion, until it shall be otherwise ordained by Congress; if a personal esteem for the French nation, formed in a residence of seven years chiefly among them, and a sincere desire to preserve the friendship, which has been so much for the honor and interest of both nations; if, while the conscious honor and integrity of the people of America, and the internal sentiment of their own power and energies must be preserved, an earnest endeavor to investigate every just cause, and remove every colorable pretence, of complaint; if an intention to pursue, by amicable negotiation, a reparation for the injuries that have been committed on the commerce of our fellow-citizens, by whatever nation; and if success cannot be obtained, to lay the facts before the legislature, that they may consider what further measures the honor and interest of the government and its constituents demand; if a resolution to do justice, as far as may depend upon me, at all times and to all nations, and maintain peace, friendship, and benevolence with all the world; if an unshaken confidence in the honor, spirit, and resources of the American people, on which I have so often hazarded my all, and never been deceived; if elevated ideas of the high destinies of this country, and of my own duties

towards it, founded on a knowledge of the moral principles and intellectual improvements of the people, deeply engraven on my mind in early life, and not obscured but exalted by experience and age; and with humble reverence, I feel it my duty to add, if a veneration for the religion of a people, who profess and call themselves Christians, and a fixed resolution to consider a decent respect for Christianity among the best recommendations for the public service, can enable me, in any degree, to comply with your wishes, it shall be my strenuous endeavor that this sagacious injunction of the two Houses shall not be without effect.

With this great example before me—with the sense and spirit, the faith and honor, the duty and interest of the same American people, pledged to support the constitution of the United States, I entertain no doubt of its continuance in all its energy; and my mind is prepared, without hesitation, to lay myself under the most solemn obligations to support it to the utmost of my power.

And may that Being who is supreme over all, the patron of order, the fountain of justice, and the protector, in all ages of the world, of virtuous liberty, continue his blessing upon this nation and its government, and give it all possible success and duration, consistent with the ends of his providence.

## GEORGE WASHINGTON.

THE ancestors of Washington emigrated from England to Virginia in the year 1657, and settled in the district lying between the Potomac and Rappahannock rivers. Augustine, the father of Washington, was born in 1694. He was twice married, and died in 1743, leaving several sons. George, the subject of this sketch, was the eldest by his second wife, the beautiful Mary Ball, and was born at Bridge Creek, on the twenty-second of February (eleventh, old style), 1732. At an early age he manifested a disposition for a military life, and expressed an ardent desire to enter the service of the British crown. A midshipman's warrant was procured for him, but he was prevented from assuming its duties by the objections of his affectionate mother, who could not reconcile herself to the idea that "her eldest born" should be so completely severed from her and exposed to the hardships and perils of a boisterous profession. He was returned to school, and continued in the study of mathematics and other branches, which should prepare him either for civil or military life. On the completion of his sixteenth year we find him passing over the mountains of his native State upon a surveying expedition, acquiring information respecting the vacant lands, and opinions of their prospective value. This portion of his life, so eloquently described by Mr. Irving, needs no notice here.

At the age of nineteen years he was appointed one of the Adjutants-general of Virginia, with the rank of Major. The duties of this office he performed but a short time. In 1753 he was deputed, at his own desire, to visit the French military posts in the valley of the Ohio and the parts adjacent, to request the withdrawal of the French soldiers from the tract of country then deemed to be within the province and jurisdiction of the colony of Virginia. The fortitude, sagacity, and great judgment with which he perfected this hazardous enterprise, excited the applause and admiration of the royal governor, Dinwiddie, as well as that of his fellow-countrymen. The unwillingness of the French commandant to evacuate the posts prompted the Virginia Assembly to raise a regiment of troops to proceed to the frontier, for the purpose of maintaining their rights. A body of three hundred troops was raised. Washington was placed in command, and having obtained permission from Colonel Fry, the commander of the regiment, marched in charge of two companies, in advance of the other troops, towards the Great Meadows. This was in April, 1754. On his march he surprised and captured a body of the enemy, and, after his arrival at the Great Meadows, erected Fort Necessity, the scene of one of Washington's most brilliant and boldest successes.

In the year 1755 the unfortunate Braddock, with an army of two thousand troops, was sent on an expedition against Fort Du Quesne. That general, aware of the extraordinary merit of Washington, urged him to become a member of his military family, and to accept the position as his aide-de-camp. This invitation was accepted, and on the tenth of May (1755), he joined Braddock at Fredericktown, in Maryland, where he had arrived, on his way to the frontier. The disastrous termination of this expedition is well known. In the battle of the Monongahela, Braddock and nearly one half of his army was slain, and Washington was exposed to the most imminent danger. Two horses were shot under him, and four balls passed through his garments. Soon after these occurrences he returned to his home, and was appointed "Commander-in-chief of all the forces raised and to be raised in Virginia." He accepted this appointment, and devoted

the greater part of the following three years in organizing the troops for the defence of the colony. In 1758 he commanded an expedition to Fort Du Quesne, and drove the French from the western frontier. On the termination of this campaign he left the army. Soon after he married Mrs. Martha Custis, and retired to the enjoyment of domestic life and the cultivation of his estate on the banks of the Potomac. Here he remained until the difficulties with the mother country began to assume a threatening aspect, in 1774, occasionally leaving the quiet of his home to discharge the duties of a county magistrate or a member of the colonial legislature.

On the meeting of the Congress at Philadelphia, in the autumn of 1774, Washington appeared as a delegate to that body from the colony of Virginia. The following year he was chosen Commander-in-chief of the American army, and proceeded to Cambridge, Massachusetts, where the main army then lay. To detail his eminent services during the period that followed until the declaration of peace, in 1783, would be to repeat the history of the American Revolution. On the conclusion of the war he resigned his commission, and retired to his home at Mount Vernon.

But he was not long allowed to remain in retirement. On the organization of the Convention at Philadelphia in 1787, for the formation of the Federal Constitution, he was elected president, and after the completion of that instrument he used all his influence to effect its adoption by the States. In 1789 he was elected President of the United States, and remained in office eight years. His conduct in this position was, as it had been throughout his life, a model of firm and dignified moderation. Previous to the expiration of his second term, he issued a farewell address to the people of the United States, which will be found in the subsequent pages of this volume—a permanent legacy to his countrymen, filled with sentiments of patriotism and sound maxims of political sagacity. After the inauguration of John Adams, his successor, he returned to Mount Vernon, where he passed the remainder of his days amidst the pleasures of his peaceful home. In 1798, at the time of the troubles with France, he consented to act as Lieutenant-general of the American army, but never took the field. On Saturday, the fourteenth of December, 1799, he died, in the sixty-eighth year of his age. The most sincere and respectful demonstrations of the national loss in his death were every where shown. Throughout the United States the ablest orators eulogized his character, but so exalted was the sentiment of respect and affection, that few of them did or could equal the demand. There have been popular men, who were great in their day and generation, but whose fame soon passed away. It is not so with the fame of Washington: it grows brighter and brighter with succeeding years.

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#### INAUGURAL ADDRESS.

General Washington was officially notified of his election as President of the United States on the fourteenth of April, 1789. He immediately left Mount Vernon, and on the twenty-third of the same month arrived at New York, where he was received by the Governor of the State and conducted under an escort of military, through an immense throng of people, to the apartments provided for him. Here he received the salutations of foreign ministers, public bodies, political characters, and private citizens of distinction, who pressed around him to offer their congratulations, and to express their joy at seeing the man who had the confidence of

all, at the head of the American Republic. On the thirtieth of April, he was inaugurated. Having taken the oath of office in the view of a great concourse of people, who attested their joy by loud and repeated acclamations, he returned to the Senate, where he delivered the following address:

FELLOW-CITIZENS OF THE SENATE, AND OF THE HOUSE OF REPRESENTATIVES: Among the vicissitudes incident to life, no event could have filled me with greater anxieties, than that of which the notification was transmitted by your order, and received on the fourteenth day of the present month. On the one hand, I was summoned by my country, whose voice I can

never hear but with veneration and love, from a retreat which I had chosen with the fondest predilection, and in my flattering hopes with an immutable decision as the asylum of my declining years; a retreat which was rendered every day more necessary, as well as more dear to me, by the addition of habit to inclination, and of frequent interruptions in my health to the gradual waste committed on it by time. On the other hand, the magnitude and difficulty of the trust, to which the voice of my country called me, being sufficient to awaken in the wisest and most experienced of her citizens a distrustful scrutiny into his qualifications, could not but overwhelm with despondence, one, who inheriting inferior endowments from nature, and unpractised in the duties of civil administration, ought to be peculiarly conscious of his own deficiencies. In this conflict of emotions, all I dare aver, is, that it has been my faithful study to collect my duty from a just appreciation of every circumstance by which it might be affected. All I dare hope is, that if in executing this task, I have been too much swayed by a grateful remembrance of former instances, or by an affectionate sensibility to this transcendent proof of the confidence of my fellow-citizens, and have thence too little consulted my incapacity as well as disinclination for the weighty and untried cares before me, my error will be palliated by the motives which misled me, and its consequences be judged by my country, with some share of the partiality in which they originated.

Such being the impressions under which I have, in obedience to the public summons, repaired to the present station, it would be peculiarly improper to omit in this first official act, my fervent supplications to that Almighty Being who rules over the universe—who presides in the councils of nations—and whose providential aids can supply every human defect, that his benediction may consecrate to the liberties and happiness of the people of the United States, a government instituted by themselves for these essential purposes; and may enable every instrument, employed in its administration, to execute with success the functions allotted to his charge. In tendering this homage to the great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own, nor those of my fellow-citizens at large, less than either. No people can be bound to acknowledge and adore the invisible hand, which conducts the affairs of men, more than the people of the United States. Every step, by which they have advanced to the character of an independent nation, seems to have been distinguished by some token of providential agency; and in the important revolution just accomplished in the system of their united government, the tranquil deliberations and voluntary consent of so many distinct communities, from which the event has resulted, cannot be compared with the means, by which most govern-

ments have been established, without some return of pious gratitude along with a humble anticipation of the future blessings which the past seem to presage. These reflections, arising out of the present crisis, have forced themselves too strongly on my mind to be suppressed. You will join with me, I trust, in thinking that there are none under the influence of which, the proceedings of a new and free government can more auspiciously commence.

By the article establishing the executive department, it is made the duty of the President, "to recommend to your consideration, such measures as he shall judge necessary and expedient." The circumstances under which I now meet you, will acquit me from entering into that subject, farther than to refer to the great constitutional charter under which you are assembled; and which, in defining your powers, designates the objects to which your attention is to be given. It will be more consistent with those circumstances, and far more congenial with the feelings which actuate me, to substitute, in place of a recommendation of particular measures, the tribute that is due to the talents, the rectitude, and the patriotism which adorn the characters selected to devise and adopt them. In these honorable qualifications, I behold the surest pledges, that as, on one side, no local prejudices or attachments, no separate views, nor party animosities, will misdirect the comprehensive and equal eye which ought to watch over this great assemblage of communities and interests; so on another, that the foundations of our national policy will be laid in the pure and immutable principles of private morality; and the pre-eminence of free government be exemplified by all the attributes which can win the affections of its citizens, and command the respect of the world. I dwell on this prospect with every satisfaction which an ardent love for my country can inspire: since there is no truth more thoroughly established, than that there exists in the economy and course of nature, an indissoluble union between virtue and happiness, between duty and advantage, between the genuine maxims of an honest and magnanimous policy and the solid rewards of public prosperity and felicity: since we ought to be no less persuaded, that the propitious smiles of heaven can never be expected on a nation that disregards the eternal rules of order and right, which heaven itself has ordained: and since the preservation of the sacred fire of liberty, and the destiny of the republican model of government, are justly considered as deeply, perhaps as finally staked, on the experiment intrusted to the hands of the American people.

Besides the ordinary objects submitted to your care, it will remain with your judgment to decide, how far an exercise of the occasional power delegated by the fifth article of the constitution is rendered expedient at the present juncture by the nature of objections which have been urged against the system, or by the degree of inquietude which has given birth to

them. Instead of undertaking particular recommendations on this subject, in which I could be guided by no lights derived from official opportunities, I shall again give way to my entire confidence in your discernment and pursuit of the public good; for I assure myself that whilst you carefully avoid every alteration which might endanger the benefits of an united and effective government, or which ought to await the future lessons of experience; a reverence for the characteristic rights of freemen, and a regard for the public harmony, will sufficiently influence your deliberations on the question how far the former can be more impregnably fortified, or the latter be safely and advantageously promoted.

To the preceding observations I have one to add, which will be most properly addressed to the House of Representatives. It concerns myself, and will therefore be as brief as possible. When I was first honored with a call into the service of my country, then on the eve of an arduous struggle for its liberties, the light in which I contemplated my duty required that I should renounce every pecuniary compensation. From this resolution I have in no instance de-

parted.\* And being still under the impressions which produced it, I must decline, as inapplicable to myself, any share in the personal emoluments, which may be indispensably included in a permanent provision for the executive department; and must accordingly pray that the pecuniary estimates for the station in which I am placed, may, during my continuance in it, be limited to such actual expenditures as the public good may be thought to require.

Having thus imparted to you my sentiments, as they have been awakened by the occasion which brings us together, I shall take my present leave; but not without resorting once more to the benign Parent of the human race, in humble supplication, that since he has been pleased to favor the American people, with opportunities for deliberating in perfect tranquility, and dispositions for deciding with unparalleled unanimity on a form of government, for the security of their union, and the advancement of their happiness; so his divine blessing may be equally conspicuous in the enlarged views, the temperate consultations, and the wise measures on which the success of this government must depend.

#### FAREWELL ADDRESS.

President Washington having determined to retire from public life, prepared for the occasion a valedictory address to the people of the United States, which was published on the seventeenth of September, 1796. This was his "last effort to impress upon his countrymen those great political truths which had been the guides of his own administration, and which could alone, in his opinion, form a sure and solid basis for the happiness, the independence, and the liberty of the United States."\*

**FRIENDS AND FELLOW-CITIZENS:** The period for a new election of a citizen, to administer the executive government of the United States, being not far distant, and the time actually arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed, to decline being considered among the number of those out of whom a choice is to be made.

I beg you, at the same time, to do me the justice to be assured that this resolution has not been taken without a strict regard to all

the considerations appertaining to the relation which binds a dutiful citizen to his country; and that in withdrawing the tender of service

\* On the 15th of June, 1775, Washington was elected by the Congress, general and commander-in-chief of the American forces. The following day the president informed him of his appointment, and requested he would accept it; to which Colonel Washington, standing in his place, answered:

**MR. PRESIDENT:** Though I am truly sensible of the high honor done me, in this appointment, yet I feel great distress, from a consciousness that my abilities and military experience may not be equal to the extensive and important trust. However, as the Congress desire it, I will enter upon the momentous duty, and exert every power I possess in their service, and for the support of the glorious cause. I beg they will accept my most cordial thanks for this distinguished testimony of their approbation.

But lest some unlucky event should happen, unfavorable to my reputation, I beg it may be remembered, by every gentlemen in the room, that I this day declare, with the utmost sincerity, I do not think myself equal to the command I am honored with.

As to pay, sir, I beg leave to assure the Congress, that as no pecuniary consideration could have tempted me to accept this arduous employment, at the expense of my domestic ease and happiness, I do not wish to make any profit from it. I will keep an exact account of my expenses. Those, I doubt not, they will discharge, and that is all I desire.—*Journals of Congress, 1775.*

\* At the end of the war, Washington presented an account of his expenses, drawn up by his own hand. A fac-simile of this account has been published in a handsome volume, by Mr. Franklin Knight, of Washington, D. C.

\* See Holmes's Annals of America.



which silence, in my situation, might imply, I am influenced by no diminution of zeal for your future interest, no deficiency of grateful respect for your past kindness, but am supported by a full conviction that the step is compatible with both.

The acceptance of, and continuance hitherto, in the office to which your suffrages have twice called me, have been a uniform sacrifice of inclination to the opinion of duty, and to a deference for what appeared to be your desire. I constantly hoped that it would have been much earlier in my power, consistently with motives which I was not at liberty to disregard, to return to that retirement from which I had been reluctantly drawn. The strength of my inclination to do this, previous to the last election, had even led to the preparation of an address, to declare it to you; but mature reflection on the then perplexed and critical posture of our affairs with foreign nations, and the unanimous advice of persons entitled to my confidence, impelled me to abandon the idea.

I rejoice that the state of your concerns, external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiment of duty or propriety, and am persuaded, whatever partiality may be retained for my services, that in the present circumstances of our country, you will not disapprove of my determination to retire.

The impressions with which I first undertook the arduous trust were explained on the proper occasion. In the discharge of this trust I will only say, that I have with good intentions contributed towards the organization and administration of the government, the best exertions of which a very fallible judgment was capable. Not unconscious, in the outset, of the inferiority of my qualifications, experience, in my own eyes, perhaps still more in the eyes of others, has strengthened the motives to diffidence of myself; and every day the increasing weight of years admonishes me more and more that the shade of retirement is as necessary to me as it will be welcome. Satisfied that if any circumstances have given peculiar value to my services they were temporary, I have the consolation to believe, that while choice and prudence invite me to quit the political scene, patriotism does not forbid it.

In looking forward to the moment which is intended to terminate the career of my public life, my feelings do not permit me to suspend the deep acknowledgment of that debt of gratitude which I owe to my beloved country for the many honors it has conferred upon me; still more for the steadfast confidence with which it has supported me; and for the opportunities I have thence enjoyed of manifesting my inviolable attachment, by services, faithful and persevering, though in usefulness unequal to my zeal. If benefits have resulted to our country from these services, let it always be remembered to your praise, and as an instructive example in our annals, that under circum-

stances in which the passions, agitated in every direction, were liable to mislead, amidst appearances sometimes dubious, vicissitudes of fortune often discouraging, in situations in which not unfrequently want of success has countenanced the spirit of criticism, the constancy of your support was the essential prop of the efforts, and a guarantee of the plans by which they were effected. Profoundly penetrated with this idea, I shall carry it with me to my grave, as a strong incitement to unceasing wishes that heaven may continue to you the choicest tokens of its beneficence; that your union and brotherly affection may be perpetual; that the free constitution, which is the work of your hands, may be sacredly maintained; that its administration, in every department, may be stamped with wisdom and virtue; that, in fine, the happiness of the people of these States, under the auspices of liberty, may be made complete by so careful a preservation and so prudent a use of this blessing as will acquire to them the glory of recommending it to the applause, the affection, and adoption of every nation which is yet a stranger to it.

Here, perhaps, I ought to stop. But a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger, natural to that solicitude, urge me, on an occasion like the present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments, which are the result of much reflection, of no inconsiderable observation, and which appear to me all-important to the permanency of your felicity as a people. These will be offered to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to bias his counsel. Nor can I forget, as an encouragement to it, your indulgent reception of my sentiments on a former and not dissimilar occasion.

Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

The unity of government which constitutes you one people, is also now dear to you. It is justly so, for it is a main pillar in the edifice of your real independence, the support of your tranquillity at home, your peace abroad, of your safety, of your prosperity, of that very liberty which you so highly prize. But as it is easy to foresee, that from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment that you should properly estimate the immense value of your national union, to your collective and individual happiness; that you should cherish a cordial, ha-

bitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity, watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest. Citizens, by birth or choice, of a common country, that country has a right to concentrate your affections. The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You have, in a common cause, fought and triumphed together; the independence and liberty you possess, are the work of joint councils and joint efforts, of common dangers, sufferings, and successes.

But these considerations, however powerfully they address themselves to your sensibility, are greatly outweighed by those which apply more immediately to your interest. Here every portion of our country finds the most commanding motives for carefully guarding and preserving the union of the whole.

The North, in an unrestrained intercourse with the South, protected by the equal laws of a common government, finds, in the productions of the latter, great additional resources of maritime and commercial enterprise, and precious materials of manufacturing industry. The South, in the same intercourse, benefiting by the agency of the North, sees its agriculture grow and its commerce expand. Turning partly into its own channels the seamen of the North, it finds its particular navigation invigorated; and while it contributes, in different ways, to nourish and increase the general mass of the national navigation, it looks forward to the protection of a maritime strength, to which itself is unequally adapted. The East, in like intercourse with the West, already finds, and in the progressive improvement of interior communications, by land and water, will more and more find a valuable vent for the commodities which it brings from abroad or manufactures at home. The West derives from the East supplies requisite to its growth and comfort, and what is perhaps of still greater consequence, it must of necessity owe the secure enjoyment of indispensable outlets for its own productions to the weight, influence, and the future maritime strength of the Atlantic side of the Union, directed by an indissoluble community of interest as one nation. Any other tenure, by which the West can hold this essential advantage, whether derived from its own separate strength, or from an apostate and unnatural

connection with any foreign power, must be intrinsically precarious.

While, then, every part of our country thus feels an immediate and particular interest in union, all the parts combined cannot fail to find, in the united mass of means and efforts, greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their peace by foreign nations; and what is of inestimable value, they must derive from union an exemption from those broils and wars between themselves which so frequently afflict neighboring countries, not tied together by the same government, which their own rivalships alone would be sufficient to produce, but which opposite foreign alliances, attachments, and intrigues, would stimulate and embitter. Hence, likewise, they will avoid the necessity of those overgrown military establishments, which, under any form of government, are inauspicious to liberty, and which are to be regarded as particularly hostile to republican liberty. In this sense it is that your union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear to you the preservation of the other.

These considerations speak a persuasive language to every reflecting and virtuous mind, and exhibit the continuance of the union as a primary object of patriotic desire. Is there a doubt whether a common government can embrace so large a sphere? Let experience solve it. To listen to mere speculation, in such a case, were criminal. We are authorized to hope that a proper organization of the whole, with the auxiliary agency of governments for the respective subdivisions, will afford a happy issue to the experiment. 'Tis well worth a fair and full experiment. With such powerful and obvious motives to union, affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those who, in any quarter, may endeavor to weaken its bands.

In contemplating the causes which may disturb our union, it occurs, as a matter of serious concern, that any ground should have been furnished for characterizing parties by geographical discriminations—Northern and Southern, Atlantic and Western—whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart-burnings which spring from these misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection. The inhabitants of our western country have lately had a useful lesson on this head. They have seen, in the negotiation by the executive, and in the unanimous ratification by the Senate, of

the treaty with Spain, and in the universal satisfaction of that event throughout the United States, a decisive proof how unfounded were the suspicions propagated among them, of a policy in the general government and in the Atlantic States, unfriendly to their interests in regard to the Mississippi; they have been witnesses to the formation of two treaties—that with Great Britain and that with Spain—which secure to them every thing they could desire, in respect to our foreign relations, towards confirming their prosperity. Will it not be their wisdom to rely, for the preservation of these advantages, on the union by which they were procured? Will they not henceforth be deaf to those advisers, if such there are, who would sever them from their brethren, and connect them with aliens?

To the efficacy and permanency of your union, a government for the whole is indispensable. No alliances, however strict, between the parts, can be an adequate substitute; they must inevitably experience the infractions and interruptions, which alliances, in all times, have experienced. Sensible of this momentous truth, you have improved upon your first essay by the adoption of a constitution of government better calculated than your former for an intimate union, and for the efficacious management of your common concerns. This government, the offspring of our own choice, uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is, the right of the people to make and to alter the constitutions of government. But the constitution, which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power and the right of the people to establish a government, presupposes the duty of every individual to obey the established government.

All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force, to put in the place of the delegated will of the nation, the will of a party, often a small, but artful and enterprising minority of the community; and according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and

wholesome plans, digested by common councils, and modified by mutual interests.

However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves the reins of government; destroying afterward the very engines which have lifted them to unjust dominion.

Toward the preservation of your government and the permanency of your present happy state, it is requisite, not only that you speedily discountenance irregular opposition to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexes. One method of assault may be to effect, in the forms of the constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments as of other human institutions; that experience is the surest standard by which to test the real tendency of the existing constitution of a country; that facility in changes, upon the credit of mere hypothesis and opinion, exposes to perpetual change, from the endless variety of hypothesis and opinion. And remember, especially, that for the efficient management of your common interests, in a country so extensive as ours, a government of as much vigor as is consistent with the perfect security of liberty, is indispensable. Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name, where the government is too feeble to withstand the enterprises of faction; to confine each member of society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

I have already intimated to you the danger of parties in the State, with particular reference to the founding of them on geographical discrimination. Let me now take a more comprehensive view, and warn you, in the most solemn manner, against the baneful effects of the spirit of party, generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes, in all governments, more or less stifled, controlled, or repressed. But in those of the popular form, it is seen in its greatest rankness, and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissensions, which, in different ages and countries, has perpetrated the most horrid enormities, is itself a frightful despotism.

But this leads, at length, to a more formal and permanent despotism. The disorders and miseries, which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual; and sooner or later, the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation on the ruins of public liberty.

Without looking forward to an extremity of this kind, (which, nevertheless, ought not to be entirely out of sight,) the common and continual mischiefs of the spirit of party, are sufficient to make it the interest and duty of a wise people, to discourage and restrain it.

It serves always to distract the public councils, and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms; kindles the animosity of one part against another; foment occasionally, riot and insurrection. It opens the door to foreign influence and corruption, which finds a facilitated access to the government itself, through the channels of party passion. Thus the policy and the will of one country are subjected to the policy and will of another.

There is an opinion, that parties, in free countries, are useful checks upon the administration of the government, and serve to keep alive the spirit of liberty. This, within certain limits, is probably true; and, in governments of a monarchical cast, patriotism may look with indulgence, if not with favor, upon the spirit of party. But in those of popular character, in governments purely elective, it is a spirit not to be encouraged. From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose. And there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warming, it should consume.

It is important, likewise, that the habits of thinking, in a free country, should inspire caution in those intrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding, in the exercise of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominate in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasion by the other, has been evinced by experiments ancient and modern: some of them in our country, and under our own eyes. To preserve them, must be as necessary as to institute them. If, in

the opinion of the people, the distribution or modification of the constitutional powers, be, in any particular, wrong, let it be corrected by an amendment in the way which the constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance, in permanent evil, any partial or transient benefit which the use can at any time yield.

Of all the dispositions and habits, which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the destinies of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connection with private and public felicity. Let it simply be asked, where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths, which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect, that national morality can prevail in exclusion of religious principles.

It is substantially true, that virtue or morality is a necessary spring of popular government. The rule, indeed, extends with more or less force to every species of free government. Who, that is a sincere friend to it, can look with indifference upon attempts to shake the foundation of the fabric?

Promote, then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.

As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible; avoiding occasions of expense by cultivating peace, but remembering also that timely disbursements to prepare for danger, frequently prevent much greater disbursements to repel it; avoiding likewise the accumulation of debt, not only by shunning occasions of expense, but by vigorous exertions in time of peace to discharge the debts which unavoidable wars may have occasioned, not ungenerously throwing upon posterity the burden which we ourselves ought to bear. The execution of these maxims belongs to your representatives, but it is necessary that public opinion should co-operate. To facilitate to them the performance of their duty, it is essential that you should practically bear in mind, that towards the payment of debts

there must be revenue; that to have revenue there must be taxes; that no taxes can be devised which are not more or less inconvenient and unpleasant; that the intrinsic embarrassment, inseparable from the selection of the proper objects, (which is always the choice of difficulties,) ought to be a decisive motive for a candid construction of the conduct of the government in making it, and for a spirit of acquiescence in the measures for obtaining revenue which the public exigencies may at any time dictate.

Observe good faith and justice towards all nations; cultivate peace and harmony with all; religion and morality enjoin this conduct; and can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and, at no distant period, a great nation, to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt that, in the course of time and things, the fruits of such a plan would richly repay any temporary advantages that might be lost by a steady adherence to it? Can it be, that Providence has not connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! is it rendered impossible by its vices?

In the execution of such a plan, nothing is more essential than that permanent, inveterate antipathies against particular nations, and passionate attachments for others, should be excluded; and that in place of them, just and amicable feelings towards all should be cultivated. The nation, which indulges towards another an habitual hatred, or an habitual fondness, is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another, disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable, when accidental or trifling occasions of dispute occur.

Hence frequent collisions, obstinate, envenomed and bloody contests. The nation, prompted by ill will and resentment, sometimes impels to war the government, contrary to the best calculations of policy. The government sometimes participates in the national propensity, and adopts through passion what reason would reject; at other times, it makes the animosity of the nation subservient to projects of hostility instigated by pride, ambition and other sinister and pernicious motives. The peace often, and sometimes, perhaps, the liberty of nations, has been the victim.

So, likewise, a passionate attachment of one nation for another, produces a variety of evils. Sympathy for the favorite nation facilitating the illusion of an imaginary common interest in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the

quarrels and wars of the latter, without adequate inducement or justification. It leads also to concessions to the favorite nation of privileges denied to others, which is apt doubly to injure the nation making the concessions; by unnecessarily parting with what ought to have been retained; and by exciting jealousy, ill will, and a disposition to retaliate, in the parties from whom equal privileges are withheld; and it gives to ambitious, corrupted, or deluded citizens, (who devote themselves to the favorite nation,) facility to betray, or sacrifice the interests of their own country, without odium, sometimes even with popularity; gilding, with the appearances of a virtuous sense of obligation, a commendable deference for public opinion, or laudable zeal for public good, the base or foolish compliances of ambition, corruption, or infatuation.

As avenues to foreign influence, in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent patriot. How many opportunities do they afford to tamper with domestic factions; to practise the arts of seduction; to mislead public opinion; to influence or awe the public councils! Such an attachment of a small or weak nation, toward a great and powerful one, dooms the former to be the satellite of the latter.

Against the insidious wiles of foreign influence, (I conjure you to believe me, fellow-citizens,) the jealousy of a free people ought to be constantly awake; since history and experience prove, that foreign influence is one of the most baneful foes of republican government. But that jealousy, to be useful, must be impartial; else it becomes the instrument of the very influence to be avoided, instead of a defence against it. Excessive partiality for one foreign nation, and excessive dislike of another, cause those whom they actuate, to see danger only on one side; and serve to veil and even second the arts of influence on the other. Real patriots, who may resist the intrigues of the favorite, are liable to become suspected and odious; while its tools and dupes usurp the applause and confidence of the people, to surrender their interests.

The great rule of conduct for us, in regard to foreign nations is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.

Europe has a set of primary interests, which to us have none, or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships and enmities.

Our detached and distant situation invites and enables us to pursue a different course. If we remain one people, under an efficient gov

crnment, the period is not far off, when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon, to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war, as our interest, guided by justice, shall counsel.

Why forego the advantages of so peculiar a situation? Why quit our own, to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalry, interest, humor, or caprice?

'Tis our true policy to steer clear of permanent alliances with any portion of the foreign world; so far, I mean, as we are now at liberty to do it; for let me not be understood as capable of patronizing infidelity to existing engagements. I hold the maxim no less applicable to public than to private affairs, that honesty is always the best policy. I repeat it, therefore, let those engagements be observed in their genuine sense. But, in my opinion, it is unnecessary, and would be unwise, to extend them.

Taking care always to keep ourselves, by suitable establishments, in a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Harmony, and a liberal intercourse with all nations, are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand; neither seeking nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying, by gentle means, the streams of commerce, but forcing nothing; establishing, with powers so disposed, in order to give trade a stable course, to define the rights of our merchants, and to enable the government to support them, conventional rules of intercourse, the best that present circumstances and mutual opinion will permit, but temporary, and liable to be, from time to time, abandoned or varied, as experience and circumstances shall dictate; constantly keeping in view, that it is folly in one nation to look for disinterested favors from another; that it must pay, with a portion of its independence, for whatever it may accept under that character; that, by such acceptance, it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude for not giving more. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion, which experience must cure, which a just pride ought to discard.

In offering to you, my countrymen, these counsels of an old and affectionate friend, I dare not hope they will make the strong and lasting impression I could wish; that they will control the usual current of the passions, or

prevent our nation from running the course which has hitherto marked the destiny of nations! But, if I may even flatter myself, that they may be productive of some partial benefit, some occasional good; that they may now and then recur to moderate the fury of party spirit; to warn against the mischiefs of foreign intrigues; to guard against the impostures of pretended patriotism; this hope will be a full recompense for the solicitude for your welfare, by which they have been dictated.

How far, in the discharge of my official duties, I have been guided by the principles which have been delineated, the public records and other evidences of my conduct must witness to you and to the world. To myself the assurance of my own conscience is, that I have at least believed myself to be guided by them.

In relation to the still subsisting war in Europe, my proclamation of the 22d of April, 1793, is the index to my plan. Sanctioned by your approving voice, and by that of your representatives in both Houses of Congress, the spirit of that measure has continually governed me, uninfluenced by any attempts to deter or divert me from it.

After deliberate examination, with the aid of the best lights I could obtain, I was well satisfied that our country, under all the circumstances of the case, had a right to take, and was bound in duty and interest to take, a neutral position. Having taken it, I determined, as far as should depend upon me, to maintain it with moderation, perseverance, and firmness.

The considerations which respect the right to hold this conduct, it is not necessary, on this occasion, to detail. I will only observe, that, according to my understanding of the matter, that right, so far from being denied by any of the belligerent powers, has been virtually admitted by all.

The duty of holding a neutral conduct may be inferred, without any thing more, from the obligation which justice and humanity impose on every nation, in cases in which it is free to act, to maintain inviolate the relations of peace and amity towards other nations.

The inducements of interest for observing that conduct will best be referred to your own reflection and experience. With me, a predominant motive has been to endeavor to gain time to our country to settle and mature its yet recent institutions, and to progress, without interruption, to that degree of strength and consistency which is necessary to give it, humanly speaking, the command of its own fortunes.

Though, in reviewing the incidents of my administration, I am unconscious of intentional error, I am, nevertheless, too sensible of my defects, not to think it probable that I may have committed many errors. Whatever they may be, I fervently beseech the Almighty to avert or mitigate the evils to which they may tend. I shall also carry with me the hope that my country will never cease to view them with indulgence, and that after forty-five years of

my life dedicated to its service, with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the mansions of rest.

Relying on its kindness in this, as in other things, and actuated by that fervent love toward it, which is so natural to a man who views in it the native soil of himself and his progenitors

for several generations, I anticipate, with pleasing expectations, that retreat in which I promise myself to realize, without alloy, the sweet enjoyment of partaking, in the midst of my fellow-citizens, the benign influence of good laws under a free government—the ever favorite object of my heart, and the happy reward, as I trust, of our mutual cares, labors, and dangers.\*

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\* Attempts have been made to rob Washington of the authorship of this address; thus far without success. No better proof that Washington was the author of it is necessary, than the facts produced by those who assert to the contrary. The copy from which the address was first published, entirely in Washington's own handwriting, marked with corrections and erasures, is now in the possession of Mr. James Lenox, of New York, by whom it has been printed, com-

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plete. The readers can satisfy themselves in relation to this matter, by referring to Mr. Lenox's reprint; in the appendices to which are reproduced the statement of Mr. Claypoole; the report of Mr. Rawle; the letter of Chief Justice Jay, and Mr. Sparks' paper. A reference may also be made to Sullivan's Familiar Letters, page 115, and to the interesting discourse of the Hon. Luther Bradish, now in the archives of the New York Historical Society.

## ELIAS BOUDINOT.

OF Mr. Boudinot's ancestors hardly any thing is recorded. His grandfather was one of the numerous Protestants who fled from France to America on the revocation of the Edict of Nantes. His father died in the year 1770, and all that is known of his mother is, that she was of Welsh descent. He was born in Philadelphia, on the second of May, 1740. After receiving a classical education, such as the colonies at that period afforded, he commenced the study of law in the office of Richard Stockton,\* an eminent lawyer of New Jersey. Soon after he entered upon the practice of his profession, and rose to distinction. Early in life he married the eldest sister of his law preceptor, by whom he had an only daughter. Mrs. Boudinot died in 1808, and he was a second time married to a lady of New York, who survived him.

At the commencement of the difficulties with the mother country, Mr. Boudinot espoused the cause of the colonies, advocating their rights against the encroachments of tyranny and the cruelties of the ministry, with ability and the highest patriotism. In 1777 he was appointed by the Continental Congress, Commissary-general of prisoners, and during the same year he was elected a delegate to that body from the State of New Jersey. In this position he became distinguished, being in November, 1782, chosen President of Congress. In that capacity, subsequently, he signed the treaty of peace, which secured the independence of the United States. Soon after he resumed the practice of his profession, and on the adoption of the Federal Constitution in 1789, he was again elevated to a seat in the lower house of Congress, where he remained, by re-elections, during the succeeding six years, taking an important part in the delib-

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\* RICHARD STOCKTON was born at Princeton, New Jersey, on the 1st of October, 1730. His ancestors emigrated from England at an early period of the colony. John Stockton, his father, was a gentleman of extensive fortune, and a high character, a great benefactor to the College of New Jersey, and for many years a judge in the Court of Common Pleas, in the county of Somerset. He acquired his education at an academy in Nottingham, Maryland, under the charge of the Rev. Samuel Finley. He graduated at New Jersey College; read law with David Ogden, of Newark; was admitted to the bar in August, 1754, and at once entered upon the duties of his profession. His practice gradually increased; "as an eloquent and accomplished advocate, he had no competitor." In 1766 he visited England, where he was received with much attention, and often consulted upon the affairs of the colonies. During his visit he used his efforts to obtain the services of Dr. Witherspoon, for the college of his native State, and was successful. Dr. Witherspoon became the president of that institution on the death of Dr. Finley. Mr. Stockton remained abroad some fifteen months. The year following his return he was made a member of Council, and in 1774 he was appointed a judge of the Supreme Court. He was a member of the Congress of 1776, and signed the Declaration of Independence. During the war he suffered the greatest distresses. His residence at Princeton was directly in the route of the British army, in its triumphant march through New Jersey. His home was soon the scene of desolation; his estate was laid waste, his property pillaged and destroyed. Compelled to fly with his wife and children to a place of safety, he sought refuge in the house of an old friend, in the county of Monmouth. But the place of his retreat was soon discovered by a party of refugee royalists, who dragged him from his bed at night; subjected him to every species of insult and indignity; exposed him to all the severity of a most inclement season; and hurried him to New York, where he was thrown into the common jail. His treatment here was so severe as to call for the interposition of Congress; and after his release his health was so broken that he never recovered. He died on the 28th of February, 1781, in the fifty-first year of his age. He married the sister of Elias Boudinot, and left two sons and four daughters. Mrs. Stockton was a woman of highly-cultivated mind, and of excellent literary taste. She was the author of several poetical productions, many of which evince no ordinary merit.—*New Jersey Historical Collections*, vol. 8 pp. 190-202.



erations of that body. On leaving that station, in 1796, he was appointed, by President Washington, Director of the National Mint, as the successor of Dr. Rittenhouse,\* in which office he continued until 1805, performing its duties with such fidelity and ability as commanded universal confidence. Resigning his office, he retired from all public life, and settled in Burlington, New Jersey, where "he passed his time in literary pursuits, liberal hospitality, and active attention to the best interests of his country and of the church of Christ, for which he was ever distinguished." At an early period of his life he united himself in full communion with the Christian church, devoting himself to the exercise of a liberal public and private charity, and uniformly continuing a zealous and exemplary professor of religion to the day of his death. He was a trustee and a munificent benefactor of the College of New Jersey, founding, in that institution, an extensive and valuable cabinet of natural history, besides bequeathing to it at his death a large sum of money and valuable tracts of land.

In 1812 he was elected a member of the Board of Foreign Missions, and on the organization of the American Bible Society in 1816, he was chosen its first president. In accepting that office he wrote: "I am not ashamed to confess that I accept the appointment of President of the American Bible Society as the greatest honor that could have been conferred on me this side of the grave." A short time after he presented that society with ten thousand dollars, thus effectually aiding in the establishment of that important moral agency, whose powerful and cheering influence is now felt in all the corners of the world.

Mr. Boudinot evinced a great interest in the cause of missions, particularly in reference to the aborigines of America. In 1816 he published a curious work, in which he endeavored, like Mr. Adair,† to establish the conclusion that the American Indians were the descendants of the lost tribes of Israel;‡ and when the Cherokee youths were brought to the school of the Foreign Missions in 1818, one of them, by his permission, took his name. He continued in the presidency of the Bible Society until his decease, displaying an unremitting interest in the welfare of that institution, and performing the duties of his office even while suffering under the infirmities of a very advanced age and acute bodily pain. He died in the year 1821. By the religion which he professed he was supported and cheered as he went down to the grave. His patience was unexhausted; his faith was strong and triumphant. Exhorting those around him to rest in Jesus Christ, as the only ground of trust, and commending his daughter and only child to the care of his friends, he expressed his desire to go in peace to the bosom of his Father in heaven; and his last prayer was, "Lord Jesus, receive my spirit!" By his will, Dr. Boudinot, after providing suitably for his only daughter, bequeathed the most of his large estate to those objects which had been dearest to him through life: the promotion of literature and the diffusion of knowledge.§

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\* David Rittenhouse, the celebrated mathematician, was born at Germantown, Pa., on the 8th of April, 1782, and died 26th of June, 1796. The memoirs of his life were published, in 1813, by his nephew, William Barton, and contain various notices of many of the distinguished contemporaries of Dr. Rittenhouse.

† James Adair was an Indian trader, and for many years resided among the southern tribes, principally the Chickasaws and Cherokees. He published a *History of the American Indians*, in 1775. In that work he labored to show, from certain supposed resemblances in manners and customs, the descent of the aborigines of America from the Jews. The most valuable part of his work is in his vocabularies of Indian dialects, and even these are not wholly satisfactory to the ethnological student.

‡ The title of this work is, "*A Star in the West; or a humble attempt to discover the long lost Ten Tribes of Israel, preparatory to their return to their beloved city Jerusalem.*" Dr. Boudinot also published, in 1790, *The Age of Revelation; or the Age of Reason an Age of Infidelity*; subsequently an oration before the Society of the Cincinnati, which is included in this volume; *The Second Advent of the Messiah*; and the Life of William Tennent.

§ In the preparation of this sketch, the editor has relied mainly on the facts as given by Mr. Holmes, in his invaluable *Annals of America*, and the brief sketch of Mr. Boudinot's life in the National Portrait Gallery.

## ORATION BEFORE THE CINCINNATI.

THIS oration was delivered by Mr. Boudinot, at Elizabethtown, New Jersey, agreeably to a resolution of the State Society of Cincinnati,\* on the Fourth of July, 1793.

GENTLEMEN, BRETHREN, AND FELLOW-CITIZENS: Having devoutly paid the sacrifice of prayer and praise to that Almighty Being, by whose favor and mercy this day is peculiarly dedicated to the commemoration of events which fill our minds with joy and gladness, it becomes me, in obedience to the resolutions of our Society, to aim at a further improvement of this festival, by leading your reflections to the contemplation of those special privileges which attend the happy and important situation you now enjoy among the nations of the earth.

Is there any necessity, fellow-citizens, to spend your time in attempting to convince you of the policy and propriety of setting apart this anniversary, for the purpose of remembering, with gratitude, the unexampled event of our political salvation?

The cordial testimony you have borne to this institution for seventeen years past, supersedes the necessity of an attempt of this kind; and, indeed, if this had been the first instance of our commemorating the day, the practice of all nations and of all ages, would have given a sanction to the measure.

The history of the world, as well sacred as profane, bears witness to the use and importance of setting apart a day as a memorial of great events, whether of a religious or political nature.

No sooner had the great Creator of the heavens and the earth finished his almighty work, and pronounced all very good, but he set apart (not an anniversary, or one day in a year, but) one day in seven, for the commemoration of his inimitable power in producing all things out of nothing.

The deliverance of the children of Israel from a state of bondage to an unreasonable tyrant, was perpetuated by the eating of the Paschal Lamb, and enjoining it to their posterity as an annual festival for ever, with a "remember this day, in which ye came out of Egypt, out of the house of bondage."

The resurrection of the Saviour of mankind is commemorated by keeping the first day of the week, not only as a certain memorial of his first coming in a state of humiliation, but the positive evidence of his future coming in glory.

Let us then, my friends and fellow-citizens, unite all our endeavors this day, to remember, with reverential gratitude to our supreme Benefactor, all the wonderful things he has done for

us, in a miraculous deliverance from a second Egypt—another house of bondage. "And thou shalt show thy son on this day, saying this day is kept as a day of joy and gladness, because of the great things the Lord has done for us, when we were delivered from the threatening power of an invading foe. And it shall be a sign unto thee, upon thine hand, and for a memorial between thine eyes, that the law of the Lord may be in thy mouth, for with a strong hand hast thou been delivered from thine enemies: Thou shalt therefore keep this ordinance in its season, from year to year, for ever."

When great events are to be produced in this our world, great exertions generally become necessary; men are therefore usually raised up, with talents and powers peculiarly adapted to the purposes intended by Providence, who often by their disinterested services and extreme sufferings, become the wonder as well as the examples of their generation.

The obligations of mankind to these worthy characters, increase in proportion to the importance of the blessings purchased by their labors.

It is not then an unreasonable expectation which, I well know, generally prevails, that this day should be usually devoted to the perpetuating and respectfully remembering the dignified characters of those great men, with whom it has been our honor to claim the intimate connection of fellow-citizens,—men who have purchased our present joyful circumstances at the invaluable price of their blood.

But you must also acknowledge with me, that this subject has been so fully considered, and so ably handled by those eloquent and enlightened men who have gone before me in this honorable path, that had their superior abilities fallen to my lot, I could do but little more than repeat the substance of their observations and vary their language.

Forgive me, ye spirits of my worthy, departed fellow-citizens! Patriots of the first magnitude, whose integrity no subtle arts of bribery and corruption could successfully assail; and whose fortitude and perseverance no difficulties or dangers could intimidate! Whose labors and sufferings in the common cause of our country—whose exploits in the field and wisdom in the cabinet, I have often been witness to, during a cruel and distressing war! Forgive, O Warren, Montgomery! and all the nameless heroes of your illustrious group! Forgive, that I omit on the present occasion, to follow the steps of those compatriots who have preceded me, but had rather spend this sacred hour in contemplating those great purposes which animated your souls in the severe conflict, and for which you fought and bled!

Were you present to direct this day's meditations, would you not point to your scarred limbs and bleeding breasts, and loudly call upon

\* See note at page 267.

us to reward your toils and sufferings, by forcibly inculcating and improving those patriotic principles and practices which led you to those noble achievements that secured the blessings we now enjoy?

Yes, ye martyrs to liberty! ye band of heroes! ye once worthy compatriots and fellow-citizens! We will obey your friendly suggestion, and greatly prize that freedom and independence, purchased by your united exertions, as the most invaluable gem of our earthly crown!

The late revolution, my respected audience, in which we this day rejoice, is big with events that are daily unfolding themselves and pressing in thick succession, to the astonishment of a wondering world!

It has been marked with the certain characteristic of a divine over-ruling hand, in that it was brought about and perfected against all human reasoning, and apparently against all human hope; and that in the very moment of time when all Europe seemed ready to be plunged into commotion and distress.

Divine Providence, throughout the government of this world, appears to have impressed many great events with the undoubted evidence of his own almighty arm. He putteth down kingdoms and he setteth up whom he pleaseth, and it has been literally verified in us, that, "no king prevaileth by the power of his own strength."

The first great principle established and secured by our revolution, and which since seems to be pervading all the nations of the earth; and which should be most zealously and carefully improved and gloried in by us, is the rational equality and rights of men, as men and citizens.

I do not mean to hold up the absurd idea charged upon us, by the enemies of this valuable principle, and which contains in it, inevitable destruction to every government, "that all men are equal as to acquired or adventitious rights." Men must and do continually differ in their genius, knowledge, industry, integrity and activity.

Their natural and moral characters—their virtues and vices—their abilities, natural and acquired—together with favorable opportunities for exertion, will always make men different among themselves, and of course create a pre-eminency and superiority one over another. But the equality and rights of men here contemplated are natural, essential, and unalienable, such as the security of life, liberty, and property. These should be the firm foundation of every good government, as they will apply to all nations, at all times, and may properly be called a universal law. It is apparent that every man is born with the same right to improve the talent committed to him, for the use and benefit of society, and to be respected accordingly.

We are all the workmanship of the same divine hand. With our Creator, abstractly considered, there are neither kings nor subjects,—

masters nor servants, otherwise than stewards of his appointment, to serve each other according to our different opportunities and abilities, and of course accountable for the manner in which we perform our duty,—he is no respecter of persons,—he beholds all with an equal eye, and although "order is heaven's first law," and he has made it essential to every good government, and necessary for the welfare of every community, that there should be distinctions among members of the same society, yet this difference is originally designed for the service, benefit, and best good of the whole, and not for their oppression or destruction.\*

It is our duty then, as a people, acting on principles of universal application, to convince mankind of the truth and practicability of them, by carrying them into actual exercise for the happiness of our fellow-men, without suffering to be perverted to oppression or licentiousness.

The eyes of the nations of the earth are fast opening, and the inhabitants of this globe, notwithstanding it is 3000 years since the promulgation of that invaluable precept, "thou shalt love thy neighbor as thyself," are but just beginning to discover their brotherhood to each other, and that all men, however different with regard to nation or color, have an essential interest in each other's welfare.

Let it then be our peculiar, constant care and vigilant attention, to inculcate this sacred principle, and to hand it down to posterity, improved by every generous and liberal practice, that while we are rejoicing in our own political and religious privileges, we may with pleasure contemplate the happy period, when all the nations of the earth shall join in the triumph of this day, and one universal anthem of praise shall arise to the universal Creator in return for the general joy.

Another essential ingredient in the happiness we enjoy as a nation, and which arises from the principles of the revolution, is the right that every people have to govern themselves in such manner as they judge best calculated for the common benefit.

It is a principle interwoven with our constitution, and not one of the least blessings purchased by that glorious struggle, to the commemoration of which this day is specially devoted, that every man has a natural right to be governed by laws of his own making, either in person or by his representative; and that no authority ought justly to be exercised over him, that is not derived from the people, of whom he is one.

\* Lactantius, lib. 5, cap. 15, fol. 399, speaking of the universal equality of mankind, says: "*Æquitatem dico—se cum cæteris cœquandi, quam Cicero æquabilitatem vocat—Deus enim, qui homines generat & inspirat, omnes æquos, id est pares esse voluit: Eandem conditionem vivendi omnibus posuit, omnes ad sapientiam genuit: omnibus immortalitatem spopondit. Nemo apud eum servus est, nemo dominus.*"

This, fellow-citizens, is a most important, practical principle, first carried into complete execution by the United States of America.

I tremble for the event, while I glory in the subject.

To you, ye citizens of America! do the inhabitants of the earth look with eager attention for the success of a measure on which their happiness and prosperity so manifestly depend.

To use the words of a famous foreigner, "You are become the hope of human nature, and ought to become its great example. The asylum opened in your land for the oppressed of all nations must console the earth."

On your virtue, patriotism, integrity, and submission to the laws of your own making, and the government of your own choice, do the hopes of men rest with prayers and supplications for a happy issue.

Be not, therefore, careless, indolent, or inattentive, in the exercise of any right of citizenship. Let no duty, however small, or seemingly of little importance, be neglected by you.

Ever keep in mind that it is parts that form the whole, and fractions constitute the unit. Good government generally begins in the family, and if the moral character of a people once degenerates, their political character must soon follow.

A friendly consideration of our fellow-citizens, who by our free choice become the public servants, and manage the affairs of our common country, is but a reasonable return for their diligence and care in our service.

The most enlightened and zealous of our public servants, can do little without the exertions of private citizens to perfect what they do but form as it were in embryo. The highest officers of our government are but the first servants of the people and always in their power: they have, therefore, a just claim to a fair and candid experiment of the plans they form and the laws they enact for the public weal. Too much should not be expected from them; they are but men and of like passions and of like infirmities with ourselves; they are liable to err, though exercising the purest motives and best abilities required for the purpose.

Times and circumstances may change and accidents intervene to disappoint the wisest measures. Mistaken and wicked men (who cannot live but in troubled waters) are often laboring with indefatigable zeal, which sometimes prove but too successful, to sour our minds and derange the best formed systems. Plausible pretensions and censorious insinuations, are always at hand to transfer the deadly poison of jealousy, by which the best citizens may for a time be deceived.

These considerations should lead to an attentive solicitude to keep the pure, unadulterated principles of our constitution, always in view; to be religiously careful in our choice of public officers; and as they are again in our power at very short periods, lend not too easily a patient ear to every invidious insinuation or improba-

ble story, but prudently mark the effects of their public measures, and judge of the tree by its fruits.

I do not wish to discourage a constant and lively attention to the conduct of our rulers. A prudent suspicion of public measures is a great security to a republican government; but a line should be drawn between a careful and critical examination into the principles and effects of regular systems after a fair and candid trial, and a captious, discontented and censorious temper, which leads to find fault with every proposition in which we have not an immediate hand; and raise obstacles to rational plans of government, without waiting a fair experiment. It is generally characteristic of this disposition, to find fault without proposing a better plan for consideration.

We should not forget that our country is large, and our fellow-citizens of different manners, interests, and habits. That our laws to be right, must be equal and general; of course the differing interests must be combined, and brotherly conciliation and forbearance continually exercised, if we will judge with propriety of those measures that respect a nation at large.

While we thus enjoy as a community, the blessings of the social compact in its purity, and are all endeavoring to secure the invaluable privileges, purchased by the blood of thousands of our brethren who fell in the dreadful conflict; let us also be careful to encourage and promote a liberality and benevolence of mind towards those whom they have left behind, and whose unhappy fate it has been to bear a heavier proportion of the expensive purchase, in the loss of husbands, parents or children, perhaps their only support and hope in life.

Mankind, considered as brethren, should be dear to each other; but, fellow-citizens, who have together braved the common danger—who have fought side by side,—who have mingled their blood together, as it were in one rich stream,—who have labored and toiled with united efforts to accomplish the same glorious end, must surely be more than brethren—it is a union cemented by blood.

I can no longer deny myself the felicity, my beloved friends and fellow-citizens, members of a Society founded on these humane and benevolent principles, of addressing myself more particularly to you, on a day, which in so peculiar a manner shines with increasing lustre on you, refreshing and brightening your hard-earned laurels, by renewing the honorable reward of your laborious services in the gratitude of your rejoicing fellow-citizens.

Methinks I behold you on the victorious banks of the Hudson, bowed down with the fatigues of an active campaign, and the sufferings of an inclement winter, receiving the welcome news of approaching peace, and your country's political salvation, with all that joy of heart and serenity of mind, that become citizens who flew to their arms, merely at their country's call, in a time of common danger.

The war-worn soldiers, reduced to the calamities of a seven years' arduous service, now solemnly pause and reflect on the peculiarity of their critical situation. The ravages of war had been extended through a country dearer to them than life, and thereby prevented that ample provision in service or reasonable recompense on their return to private life, that prudence required and gratitude powerfully dictated.

They thought that the distresses of the army had before been brought to a point. "That they had borne all that men could bear; their property expended—their private resources at an end—their friends wearied out and disgusted with incessant applications." But another trial, severer than all, still awaits them; they are now to be disbanded and a separation to take place more distressing than every former scene! Till now the severe conflict was unseen or unattended to. Poverty and the gratitude of their country are their only reward.

True, they are to return to their friends and fellow-citizens with blessings on their heads. The general liberty and independence are now secured,—but yet want and dire distress stare many in the face. They are to return to wives and children, long used to dependence on the cold hand of charity, in hopes of a sure support from the success of the common cause, when their husband, father or child returned glorious from the field of conquest. Alas! these flattering hopes now are no more.

Their country's exhausted treasury cannot yield them even the hard-earned pittance of a soldier's pay. Being urged on one hand by the subtle poison of inflammatory, violent and artful addresses, under the specious mask of pretended friendship, (the last expiring effort of a conquered foe,)—warned on the other hand by the experience, wisdom, and rational conduct of their beloved commander, their father and long-tried friend,—they solemnly deliberate.

Some guardian angel, perhaps the happy genius of America, ever attendant on the object of her care, raises the drooping head, wipes the indignant, falling tear from the hardy soldier's eye, and suggests the happy expedient!

Brotherly affection produces brotherly relief—the victorious bands unite together—they despise the infamous idea—they refuse to listen to the siren's song—they form the social tie—they cast in the remaining fragment of their scanty pay, and instead of seizing their arms and demanding their rights by menace and violence, they refuse "to lessen the dignity or sully the glory they had hitherto maintained. They determined to give one more proof of unexampled patriotism and patient virtue, rising superior to the pressure of their complicated sufferings, and thereby afford an occasion to posterity to say, had that day been wanting, the world had not seen the last stage of political perfection, to which human nature is capable of attaining."

The glorious certainty of peace, purchased by

their sufferings and perseverance, now rouses the patriotic fire. They again rejoice in the event; they unite in a firm, indissoluble bond, "gratefully to commemorate the event, which gave independence to America,—to inculcate to latest ages the duty of laying down in peace, arms assumed for public defence in war,—to continue their mutual friendship, which commenced under the pressure of common dangers, and to effectuate every act of beneficence, dictated by a spirit of brotherly kindness to any of their number and their families, who might unfortunately be under the necessity of receiving them;" and by this unanimous act establish this sacred truth, "that the glory of soldiers cannot be well completed without acting well the part of citizens."

This, gentlemen, is your origin as a Society—the source from whence you sprang, and this day we are carrying on the work first begun in these social principles.\*

With a heart filled with unfeigned gratitude to the author of all our mercies, and overflowing with the most affectionate friendship toward you, suffer me to congratulate you on this seventeenth anniversary of our happy independence. Long, long, even to the remotest ages, may the citizens of this rising empire enjoy the triumph of this day; may they never forget the invaluable price which it costs, as well as the great purposes for which it was instituted, and may a frequent recurrence to the first principles of our constitution on this anniversary, be a constant source of security and permanence to the rising fabric! May the rights of man and the purity of a free, energetic, and independent government be continually cherished and promoted by every son of Cincinnati! May the remembrance of those worthy heroes, once our

\* The Society of the Cincinnati was established in 1783. On the tenth of May of that year, officers from the several regiments of the respective lines of the American army, met at the cantonment on Hudson river, where proposals were read and a committee appointed to prepare a plan of establishment. On the thirteenth instant a plan was submitted, and adopted, the principles of which were:

"An incessant attention to preserve inviolate those exalted rights and liberties of human nature, for which they have fought and bled, and without which the high rank of a rational being is a curse instead of a blessing.

"An unalterable determination to promote and cherish, between the respective States, that union and national honor so necessary to their happiness, and the future dignity of the American empire.

"To render permanent the cordial affection subsisting among the officers. This spirit will dictate brotherly kindness in all things, and particularly extend to the most substantial acts of beneficence, according to the ability of the society, towards those officers and their families who unfortunately may be under the necessity of receiving it."\*

The General Society of Cincinnati, "for the sake of frequent communications," was divided into State societies, and these again into districts, under the direction of the State societies. Some of these societies still (1857) exist.

\* See the proceedings of the New York Society of the Cincinnati, published in 1851.

beloved companions, whose lives they did not hold dear, when required for their country's safety, animate us to preserve inviolate, what they purchased at so high a rate! May we, by the uniform conduct of good citizens and generous, faithful friends, show ourselves worthy of such valuable connections!

Long, long may you live to enjoy the reward of your labors, in the exercise of the duties of this honorable anniversary; and after a long life of services to your country, usefulness to your Society, and happiness to yourselves, may you leave your generation in the full enjoyment of peace and a sound constitution, justified by experience, for the example of which, nations yet unborn, shall rise up and call you blessed!

And now, my respected audience, we appeal to your candor and generosity; you have heard our origin—you have known our conduct—our Society is designed for the happiness and benefit of mankind—we have no secrets—we claim no separate privileges—we ask no independent immunities—we are embarked in one common cause with you—we glory in one perfect political equality,—all we wish for, is the pleasure of renewing ancient friendships—of the mutual remembrance of past labors and sufferings—the liberal exercise of that celestial principle, charity, and one common interest with you in the security of our liberty, property, and independence.

We profess to be a band of brethren, united to our fellow-citizens by every tie of interest, gratitude, and love. Let us then go hand in hand with you, in looking forward to the happy state of our country, during a long succession of ages yet to come.

We are encouraged in this animating hope by the numerous advantages arising to us, in a peculiar manner, from the happy revolution we commemorate this day; they are conspicuous in every quarter to which the view can be directed.

If we turn our attention to the strong hope of every community, the rising generation, the world has yet enjoyed nothing equal to their advantages and future prospects.

The road to honors, riches, usefulness, and fame, in this happy country, is open equally to all. The equality of citizens in its true sense must raise the most lively hopes, prompt the noblest exertions, and secure a certainty of success to all, who shall excel in the service of their country, without respect of persons.

The meanest citizen of America educates his beloved child with a well founded hope, that if he should become equal to the task, he may rationally aspire to the command of our armies, a place in the cabinet, or even to the filling of the presidential chair; he stands on equal ground in regard to the first honors of the State, with the richest of his fellow-citizens.

The child of the poorest laborer, by enjoying the means of education (afforded in almost every corner of this happy land) is trained up for, and is encouraged to look forward to a share in the

legislation of the Union or of a particular State with as much confidence as the noblest subject of an established monarchy.

This is a peculiar happiness of our highly favored republic among the nations of the earth, proceeding from the successful revolution in which we this day rejoice.

Suffer me, ye fair daughters of New Jersey! to call on you also in a special manner, to add your invigorating smiles to the mirth and festivity of this day. Our happiness can be but half complete, if you refuse to crown the whole with your kind approbation.

Have you not at all times and do you not still continue to participate deeply in the multiplied blessings of our common country? Raised from the humiliating state of your sex in most other countries, you also breathe the sacred air of freedom, and nobly unite your exertions for the general good.

The Rights of Women are no longer strange sounds to an American ear; they are now heard as familiar terms in every part of the United States; and I devoutly hope that the day is not far distant, when we shall find them dignifying, in a distinguishing code, the jurisprudence of the several States in the Union.

But in your domestic character, do you not also enjoy the most delightful contemplations arising from the Revolution of Seventeen Hundred and Seventy-six?

Can you look on the children of your tenderest care, and reflect on the cheerful prospects opening upon them through life, without feeling the most lively emotions of gratitude for the inestimable privileges conferred on the citizens of America? Are not your resolutions strengthened and your endeavors redoubled, to furnish them with every qualification, both mental and personal, for the future service of a country thus rendered dear to you?

But your share of the joy of this day does not rise from a single source. To whom are we more indebted for the origin of our present happiness, than to your delicate and discerning sex? In vain did Columbus, our great founder and discoverer, after settling the principles of his sound philosophy, apply to the wise men of his country. In vain did he solicit, in strains of the most suppliant humiliation, the different thrones of Europe, when kings considered themselves as God's viceregents here below; despised by the ignorant—traded by the malevolent—contemned by the great—laughed at by pretended philosophers—and trifled with by the arrogance of ministers and their hirelings; all his hopes and those of a New World had, at last, sunk in despair, and we, this day, might have mingled our fate with the slaves of the Old World, had not the penetrating wisdom and persevering magnanimity of the fair, but undaunted Isabella, the ornament of your sex, and the jealousy of ours, saved this Western World from the oblivion of more than five thousand years. Did she employ the excess of useless treasures in this happy adventure? No!—

after the refusal of her husband—despising the appendages of brilliant royalty, when compared with the general good of mankind, her enlarged mind, incapable of being confined by the shackles of the age, found a resource in her costly jewels, which she freely offered as a pledge, to accomplish the glorious discovery of the fourth quarter of the globe!

To your sex, then, ladies, are we obliged to yield the palm: had this great event depended altogether on our sex, it is not easy to guess what our united fate had been at this moment. Instead of our present agreeable employment, we might have been hewers of wood and drawers of water to some mighty *Pharaoh*, whose tender mercies would have been cruelty. Your right, then, my fair auditory, to a large portion of the general joy, must be acknowledged to be of a superior kind.

Do you, my worthy fellow-citizens, of every description, wish for more lasting matter of pleasure and satisfaction in contemplating the great events brought to your minds this day? Extend, then, your views to a distant period of future time. Look forward a few years, and behold our extended forests (now a pathless wilderness) converted into fruitful fields and busy towns. Take into view the pleasing shores of our immense lakes, united to the Atlantic States by a thousand winding canals, and beautified with rising cities, crowded with innumerable peaceful fleets, transporting the rich produce from one coast to another.

Add to all this, what must most please every humane and benevolent mind, the ample provision thus made by the God of all flesh, for the reception of the nations of the earth, flying from the tyranny and oppression of the despots of the Old World, and say, if the prophecies of ancient times are not hastening to a fulfilment, when this wilderness shall blossom as a rose—the heathen be given to the *Great Redeemer* as his inheritance, and these uttermost parts of the earth for his possession.

Who knows but the country for which we have fought and bled, may hereafter become a theatre of greater events than yet have been known to mankind?

May these invigorating prospects lead us to the exercise of every virtue, religious, moral and political. May we be roused to a circum-spect conduct,—to an exact obedience to the laws of our own making,—to the preservation

of the spirit and principles of our truly invaluable constitution,—to respect and attention to magistrates of our own choice; and finally, by our example as well as precept, add to the real happiness of our fellow-men and the particular glory of our common country.

And may these great principles in the end become instrumental in bringing about that happy state of the world, when, from every human breast, joined by the grand chorus of the skies, shall arise with the profoundest reverence, that divinely celestial anthem of universal praise,—“*Gloria to God* in the highest; peace on earth; good will towards men.”\*

\* Shortly after the delivery of this oration it was published, and, in the following language dedicated to General Washington: ‘The great respect due to your public character, as the first servant of a nation of freemen, greatly heightened by a knowledge of the amiableness of your deportment in private life, have been additional arguments with me to dedicate an oration to you, which, however inadequate to the purpose, was designed to promote a reverence for that happy revolution, in which Divine Providence has been pleased to make you so peculiar an instrument.

“A frequent recurrence to the first principles of our constitution, and from thence to inculcate the necessity of a free, firm, and energetic government, in which liberty shall rise superior to licentiousness, and obedience to the laws become the best evidence of attachment to the independence of our common country, cannot but meet with your approbation.

“This is the great object designed by instituting the anniversary of the Fourth of July, one thousand seven hundred and seventy-six, as a festival, to be sacredly observed by every true American. This is the day chosen by the defenders of our country, your friends and companions in arms, to meet together and rejoice in the recollection of past labors, while they receive the glorious reward of their services, by looking forward to the increasing prosperity of the Union, secured by their united exertions.

“It arose from a desire that this jubilee might be improved to continue those principles to posterity, which led them to arm in defence of their most invaluable privileges, that the society in this State instituted an oration on this anniversary, to commemorate the successful result of their sufferings, and to perpetuate a constitution founded on the rights of men, as men and citizens.

“You, sir, as their head, must enjoy, in a very peculiar manner, the contemplation of these blessings, and to you every attempt in this important service will be most properly dedicated.

“Long may you personally experience their benign effects—long may you live to testify, by a successful practice, the truth of the theory established by your struggles in the cause of universal liberty.”

## NON-INTERCOURSE WITH GREAT BRITAIN.

On the eleventh of April, 1794, the House of Representatives having resolved itself into a Committee of the Whole, on the motion of the seventh instant,\* Mr. Boudinot rose and said:

MR. CHAIRMAN,—When the fate of a nation of as much consequence as the United States, appears to be suspended on a vote, the least to be expected from gentlemen is, to act with freedom, deliberation, and independence. I suppose I shall be among those, who, at the taking of the question, will probably be found in the minority. This will be my vote, if I am convinced that I shall be single and alone. I feel myself deeply and seriously affected with a view of the precipice, on which, in my apprehension, my country seems to stand, and I wish, for my own part, to take a full and deliberate view of it, before I join in precipitating a leap that may not add to her safety or happiness. Reasoning, and not declamation, is to be expected from gentlemen in favor of the measure under consideration.

I shall address myself to the judgments, and not to the passions of the committee. I acknowledge it may fall to my lot to mistake the true and essential interests of my country; but if this should be the case, I have the satisfaction of knowing that it will arise from the most honest and upright intentions. It is, therefore, on these principles that I shall proceed in giving my opinion on the important resolution on the table.

But, before I proceed further, I must not forget the respectful compliment paid yesterday, by my honorable friend from Maryland (Mr. Smith), to my moderation and gray hairs; indeed, I should not have taken it to myself, as I have the honor of having white instead of gray hairs, had not Mr. S.'s attention been immediately fixed on me. If either age or moderation will command my worthy

friend's close consideration of this subject, beseech him, as well as the other gentlemen of the committee, to join in attending to it calmly and seriously for a few moments, before the die is cast. I owe much, on behalf of my country, to that gentleman, for his services in the field during the late war, when both his zeal and his passions were rendered so eminently useful; I can with pleasure apologize at all times for his warmth and animation on any subject, when our common country is not to be affected. But will he permit me earnestly to request, that, with other members, he will call to mind, that we are now the representatives of four millions of people? Perhaps the lives of thousands of our fellow-citizens are depending on a single vote. The welfare of a country dearer to them than life is at stake. Gentlemen must, therefore, agree that the question is a serious one, and deserves to be treated with the most serious and deliberate consideration. Judgment, and not resentment, must direct the final determination, let it be what it may, and give a sanction to all your measures.

The gentlemen against the question have been accused of want of propriety, in looking calmly, and without the exercise of their passions, on the sufferings of the unhappy prisoners at Algiers, and the piratical spoliations of our fellow-citizens in the West Indies. Yes, sir; when I know it is neither passion nor declamation that can afford effective relief to these suffering members of the political body, I shall continue to persist in that steady, serious, and deliberate line of conduct, that, in my estimation, is alone calculated to produce that permanent and efficient aid and relief, which their extreme distress so loudly calls for; but, in my turn, I ask the gentlemen to give up their warmth on this occasion, that they may also reflect, even without passion, on the number of their fellow-citizens that must fall a sacrifice in the most successful war. Will not the gentlemen weigh well that vote, that may possibly increase the number of mourning widows and helpless orphans?

These considerations lead me to consider the measure now proposed, as of great moment and importance, and to wish it may be reasoned or considered in a manner becoming the legislators and representatives of United America, who have been sent here as her counsellors and trustees, and to whom she has committed her best and most sacred interests.

For argument's sake, and to simplify the debate, lest I may be drawn into unnecessary disputation, I will concede for the present, the constitutionality of the resolution proposed; the right of the committee to originate and determine on the measure; the unprovoked aggressions of Great Britain to warrant and justify the prohibition.

\* The motion was submitted by Abraham Clark, a member from New Jersey, and, being amended, passed the House on the twenty-first of April, 1794. It is as follows: "*Resolved*, That until the government of Great Britain shall cause restitution to be made for all losses and damages sustained by the citizens of the United States from armed vessels, or from any person or persons acting under commission or authority of the British king, contrary to the laws of nations, and in violation of the rights of neutrality; and also, until all the posts now held and detained by the king of Great Britain, within the territories of the United States, shall be surrendered and given up, all commercial intercourse between the citizens of the United States and the subjects of the king of Great Britain, so far as the same respects articles of growth or manufacture of Great Britain or Ireland, shall be prohibited: *Provided*, such prohibition shall not extend to vessels or their cargoes, arriving in any of the ports of the United States, before the — day of — next."—*Journals of Congress*, 1794.



These arguments had been repeated and urged with great apparent force, by gentlemen in favor of the affirmative side of the question; but, are the principles arising from these facts sufficient to justify a determination in favor of so harsh and unprecedented a proceeding, without previously demanding an explanation and full indemnification, agreeably to the customs and usages of other nations?

Will arguments of this kind satisfy our constituents, if they find themselves suddenly plunged into an expensive and ruinous war? Will it not very naturally be asked, Why were not the true interests of the United States under these existing circumstances carefully inquired into, and made the principal and leading object of attentive consideration? In my opinion, this should peculiarly be the sum of our present inquiry, Is it not the duty of the committee critically to examine into the preparation they are in for a step, that, in the imagination of some gentlemen of character and reputation, at the last, may precipitate our country into an immediate war? Are our ports and harbors in any tolerable state of defence? Are our magazines and arsenals properly supplied? Are our citizens in a state of organization as militia? In short, does not the measure threaten a sudden transition from a state of profound peace and happiness, unequalled by any nation, into a state of war and bloodshed, without taking those previous and prudent measures that may probably lead to an avoidance of this national evil, or at all events enable us to meet it with decision and effect?

Gentlemen have referred the committee to the conduct of America in 1776, and the success of the late war has been urged for our encouragement. The non-importation agreement has been recurred to as a precedent in point. I am well acquainted with most of the events of the late revolution. The first motions towards it, found me engaged in the common cause, and my best endeavors to complete and secure it, have never since been wanting. I well remember the consequences of the non-importation agreement, and the sufferings of our brave fellow-citizens from that imprudent measure. I have tracked them over the frozen ground by their blood, from the want of shoes, and am sensible that many had perished by the inclemency of the season, for want of tents and clothing. That agreement is universally reprobated, as a measure imprudently entered into on the principle of expecting to be involved in a war, which had it been then contemplated, nothing could have justified. I appeal to the knowledge of many men who hear me, that this agreement has often been urged to Great Britain, as a conclusive evidence, that, at the time of its adoption, America had not the least intention of independence, or a separation from the mother country; otherwise, she could never have been guilty of so impolitic a resolution. I ask then, if the committee will now repeat the mistake with their eyes open, and expose our country to the

same misfortunes, and our fellow-citizens to a repetition of sufferings, by a measure that promises not one important advantage to the Union, that I have heard of? In the late war, America had all the ports and harbors of the other European nations open to her; but now circumstances will be altered; in case of a war, the very reverse will be our position, excepting as to those of France.

I confess that my arguments are founded on the conviction that the resolution is a measure that will necessarily produce war; immediate, inevitable war.

My reasons are drawn from the present state of Great Britain, being in alliance with the principal powers of Europe, and under treaties to make all wars, arising from the united opposition to France, a common cause.

The necessity she would have of employing her supernumerary hands, if not in manufactures, in her armies and navies, to prevent trouble at home, added to her old grudge against us on account of principles that promise much trouble to all the monarchs of Europe; her late conduct with regard to our trade, founded on the instructions of the 8th of June, and 6th of November last: her withholding the posts, contrary to any principle of justice and good faith, and against the most positive assurances; and lastly, from the anxiety to regain the territory between the Lakes and the Mississippi;—I agree that neither of these singly, nor even the whole together, could justify her in her own opinion, in making an open attack upon us, but might tempt her to construe the measure before the committee into an act of hostility on our part, as contrary to our professed neutrality.

It is a point conceded in the laws of nations, that granting to one of the belligerent powers advantages in your ports which are refused to another, is a breach of neutrality.

The object with Great Britain will be, to convince her allies, that the aggression arose on account of the war with France, to prevail on them to make it a common cause; and in this they will not want plausible evidence. It is not sufficient that we know ourselves innocent of the charge. We should be prudently careful not unnecessarily to give reason to justify the construction. If the previous steps of negotiation, used by all civilized nations, are neglected, they will have the advantage of the argument, and we shall injure ourselves. I ask if any gentleman will say that a prohibition of commerce at the eve of a war, or even the apprehension of it, is wisely calculated to clothe an army, replenish our magazines, supply our arsenals, or provide a revenue by which to support a war.

I hope every member has taken the trouble I have, of looking into their stores, inquiring what is on hand, calculating what will be absolutely necessary, and reflecting seriously and dispassionately on the sources of supply. If they will, I doubt not but that they will find something more than passion and resentment

necessary to meet the probable consequences of so premature a determination.

It is no uncommon thing for gentlemen to differ on important measures; and I will not even insinuate that I may not be found wrong in these ideas, and wholly mistaken in my conjectures on this occasion, but I beg members to consider the different ground on which the two sides of the House stand. If the minority, of whom I expect to be one, shall in the end be found to have been alarmed with consequences altogether unfounded, and if the issue proves successful to the peace of our common country, they will have the happiness of rejoicing with the majority in their superior wisdom and foresight; and though even they will suffer in character, yet their country will be saved. But if the minority shall in the end be right, and our country shall be deluged in a destructive war, and her best interests endangered by the discovery of the mistake, too late for redress, gentlemen in favor of the resolution will seriously regret that they had not, at least, used more caution.

As at present advised, I shall give my vote against the resolution. It is from a thorough conviction, on the most careful examination, that the resolution is against the interest and welfare of the United States, all circumstances considered. And this I shall do, wholly regardless of the malevolent insinuations, that Britain has an influence in this House. I feel a conscious dignity of mind, a virtuous pride of heart, in believing that not all the wealth of that opulent nation could purchase my influence to a single measure injurious to my country: and under this conviction I cannot believe there is a member of the committee in a different predicament.

I again repeat that I shall most sincerely rejoice, if this measure is adopted, to find, in the end, that my mind has viewed it as productive of consequences that are wholly unfounded; and although under my present view of this subject, considering it as inimical to my country, I am bound in conscience to vote against it; yet the councils of America are directed by

superior wisdom, and this country has reaped the rich harvest of peace and happiness. But it may now be asked, if it is meant passively to submit to the injuries acknowledged on all hands to be sustained by the imperious and overbearing conduct of Great Britain? I answer no, by no means.

I would follow the examples and pursue the measures of other nations in like circumstances—examples and measures founded in policy and sound understanding. I would, by a special envoy, make known to that court our sense of her unwarrantable aggressions; I would demand immediate indemnification for the present, and security against future sufferings of a like nature—insist on a categorical answer, after applying to her justice and best interests; and if at last a war shall be the only means of obtaining justice, I would then, being previously prepared, meet it as becomes a free and independent nation, trusting to the righteousness of her cause.

By this means the other nations of Europe will be made acquainted with our complaints, become witnesses to our love of peace, and bear testimony to the justice of our appeal to arms. I have fully considered the question—I have viewed it in every point of light. I have endeavored to consider the consequences which most probably will arise from it, and I cannot convince my mind, that this measure will be productive of any good to the United States; while it offers many reasons to conclude, that it may be fraught with the greatest evil. In case of the most successful war, America has nothing to gain, while her loss of blood and treasure is sure and certain.

I once flattered myself that this was the only country on the globe, whose interest it was to be at peace with all the world, and at the same time the interest of all the world to be at peace with us. But I fear we have been so much actuated by a resentment of injuries received, as to lose sight of our true interests under existing circumstances, and therefore will be hurried into measures we may hereafter have reason seriously to lament.

## JOHN DICKINSON.

THE eminent subject of this memoir was born in Maryland, on the second day of November, old style, in the year 1732. He was the eldest son, by a second marriage, of Samuel Dickinson, who, while his son was yet a child, removed to the village of Dover, Delaware, where he subsequently occupied the first judgeship of the Court of Common Pleas. At an early age John was placed under the tuition of Mr. (afterward Chancellor) Kilen, of Delaware. Subsequently he studied law in the office of John Morland, at Philadelphia, and on the completion of his course with him, he visited England and entered the Temple in London. After remaining here about three years he returned to Philadelphia, and established himself in the practice of his profession.

In 1764 he entered upon the scenes of public life as a member of the Pennsylvania Assembly, where he soon established a reputation as a statesman of ability and powerful eloquence. The first occasion which elicited his oratorical powers, was the controversy between the Colonial Assembly and the proprietors, in which the latter claimed exemption from taxes on their estates. On the twenty-fourth of May, 1764, he delivered a masterly speech against a proposition made to petition the King for a change in the government of the province. He opposed the measure because he considered it "fraught with danger, and calculated to involve the province in a disastrous conflict with a superior power." His speech on that occasion is included in the present collection. In September of this year he published a *Reply to a piece called the speech of Joseph Galloway*, pretended to have been spoken in the Pennsylvania Assembly, in answer to Mr. Dickinson's speech of the May previous. This reply was a general refutation of the calumnies heaped upon the friends of proprietary government by the "insidious Galloway," and an able defence of the political course of Mr. Dickinson.

Mr. Dickinson was a member of the general Congress which met at New York in October, 1765, and in that capacity he prepared the resolutions of that body, announcing their opposition to the plans of the ministry of Great Britain, and the principles which they considered as natural and belonging to their system of government. The same year, during the stamp-act excitement, he published a pamphlet entitled *The Late Regulations respecting the British Colonies on the Continent of America, considered in a Letter from a Gentleman in Philadelphia to his Friend in London*; in which he exposed, with great spirit and elegance of composition, the impolitic tendency of the ministerial measures, and the discontent they would inevitably produce among the colonists. In concluding this rich production, he said, "The reflections of the colonists on these melancholy subjects are not a little embittered by a firm persuasion, that they never would have been treated as they are if Canada still continued in the hands of the French. Thus, their hearts glowing with every sentiment of duty and affection towards their mother country, and expecting, not unreasonably, perhaps, some marks of tenderness in return, are pierced by a fatal discovery, that the vigorous assistance which they faithfully afforded her in extending her dominions, has only proved the glorious but destructive cause of the calamities they now deplore and resent. Yet still their resentment is but the resentment of dutiful

children, who have received unmerited blows from a beloved parent. Their obedience to Great Britain is secured by the best and strongest ties, those of affection; which alone can, and I hope will, form an everlasting union between her and her colonies. May no successes or suspicions ever tempt her to deviate from the natural generosity of her spirit. And may no dreadful revolution of sentiments ever teach them to fear her victories, or to repine at her glories."

In 1766 appeared his celebrated *Address to the Committee of Correspondence in Barbadoes*, under the signature of *A North American*. This was occasioned by a letter from that committee to their agent at London, in which, after remonstrating against the ministerial system of taxation, they compared their loyalty and submission with "the present rebellious opposition given to authority by our fellow-subjects on the northern continent." This aroused the indignation of Mr. Dickinson. Had the charge been made by a private person, he said, he would not have thought it worth answering; but when it was made by men vested with a public character, by a committee of correspondence, representing two branches of legislature in a considerable government, and the charge was not only approved by those branches, but was actually published to the world, it seemed to deserve notice. "I waited some time, in hopes of seeing the cause espoused by an abler advocate; but being disappointed, I resolved, *favente Deo*, to snatch a little time from the hurry of business, and to place, if I could, the letter of those gentlemen to their agent in a proper light."\* This production excited universal attention throughout the country, by the forcible reasoning it contained, and its strong defence of the principles and conduct of the colonists.

On the fifth of November, 1767, the first of a series of letters, entitled, *The Farmer's Letters to the Inhabitants of the British Colonies*, appeared from the pen of Mr. Dickinson. They were written to excite the attention of the colonists to the illegality of the British system of taxation, and to the urgent necessity of opposing it. The simplicity, elegance of style, and sterling patriotism of these essays, added extensively to the fame of their author. They were read with intense interest, and produced the most beneficial effects among the people. The inhabitants of Boston were so sensible of the eminent service he had done to the common cause, that they addressed him in the most laudatory manner. "To your eminent worth and virtue," they said, "the inhabitants of this town, in full town meeting assembled, express their earliest gratitude: Actuated by the same generous principles which appear with so much lustre in your useful labors, they will not fail warmly to recommend, and industriously to promote, that union among the several colonies, which is so indispensably necessary for the security of the whole. Though such superior merit must, assuredly, in the closest recess, enjoy the divine satisfaction of having served, and possibly saved this people, though veiled from our view, you modestly shun the deserved applause of millions; permit us to intrude upon your retirement, and salute the *Farmer* as the friend of Americans, and the common benefactor of mankind."† The Farmer's answer was published in the Boston Gazette. In 1769 an edition of the Letters was published in Virginia, with a preface from the pen of Richard Henry Lee, and Doctor Franklin caused them to be republished in London, with a preface by himself, in which he urged them upon the attention of the public.‡ In 1769 they were translated into French, and published at Paris.

\* Extract from the preface of the address, as printed in the Writings of Dickinson, vol. 1, page 99.

† An account of the proceedings of the citizens of Boston on this occasion, was printed in the Boston Chronicle, of March 28th, 1768, from which paper this extract is taken. It was probably owing to Mr. Dickinson's publications, that the Pennsylvania Assembly, before they knew what measures the Massachusetts Bay, or any other colony would pursue, took into consideration the act imposing duties on paper, glass, &c., and gave positive instructions to their agents, to unite with other agents in applying to Parliament and praying relief.—*Gordon's American War*, vol. 1, page 221.

‡ In that production Dr. Franklin said, "When I consider our fellow-subjects in America as rational creatures, I cannot but wonder, that, during the present wide difference of sentiments in the two countries, concerning the power of Parliament in laying taxes and duties on America, no application has been made to their understandings, no able and learned pen amongst us has been employed in convincing them that they are in the wrong; proving clearly that by the established law of nations, or by the terms of their original constitution, they are taxable by our Parliament, *though they have no representative in it*."

"On the contrary, whenever there is any news of discontent in America, the cry is, 'Send over an army, or a fleet, and reduce the dogs to reason.'

"It is said of a choleric people, that with them there is *but a word and a blow*."

A short time after the publication of the twelfth and last number of the *Farmer's Letters*. Mr. Dickinson, assisted by Arthur Lee, composed the celebrated *Liberty Song* :

Come join hand in hand, brave Americans all,  
And rouse your bold hearts at fair Liberty's call;  
No tyrannous acts shall suppress your just claim,  
Or stain with dishonor America's name.  
In freedom we're born, and in freedom we'll live;  
Our purses are ready,  
Steady, Friends, steady,  
Not as slaves, but as freemen our money we'll give. \*

This ballad became the most popular lyric of the Revolution, and excited the indignation of the poets and writers of the ministerial party, who assailed it with parodies and epigrams.

In 1774, Mr. Dickinson was a member of a committee from the several counties of Pennsylvania, authorized to instruct the Assembly by whom delegates to the Continental Congress were to be elected; and in that capacity he originated a series of resolutions and a letter of instruction, which were afterward, with some modifications, adopted and published by the committee, with an expression of their thanks, "for the laudable application of his eminent abilities to the service of his country in the performance." † Soon after this, Mr. Dickinson was elected to the Congress as a delegate from Pennsylvania, and, on the seventeenth of October, took his seat in that body. Here he at once entered upon the arduous duties of his office. He was appointed on a committee for the preparation of important addresses; drafted the eloquent and statesmanlike appeal to the people of Quebec, and the petition to the King, of which production the historian of the reign of George the Third says, "It is difficult to conceive how this address could be read, without exciting in the breasts, even of the most obdurate, strong emotions of compunction and remorse. \* \* \* \* An address penned with extraordinary force and animation, and in many parts rising to a very high strain of eloquence." ‡

The next important service rendered by Mr. Dickinson, was the preparation of the Declaration of Congress of the sixth of July, 1775, setting forth the causes and necessity of taking up arms. This production will be found in the subsequent pages of this work. The *Second Petition of Congress to the King* was also prepared by Mr. Dickinson.§ In 1776, with a majority of the Pennsylvania delegates in Congress, Mr. Dickinson opposed the Declaration of Independence, believing that it was, at least, premature; that the country was not prepared for it, and that it

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"I hope Britain is not so choleric, and will never be so angry with her colonies as to strike them. But that if she should ever think it may be necessary, she will at least let the word go before the blow, and reason with them.

"To do this clearly, and with the most probability of success, by removing their prejudices and rectifying their misapprehensions (if they are such), it will be necessary to learn what those prejudices and misapprehensions are; and before we can either refute or admit their reasons or arguments, we should certainly know them.

"It is to that end I have handed the following letters (lately published in America) to the press here.

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"The author is a gentleman of repute in that country, for his knowledge of its affairs, and, it is said, speaks the general sentiments of the inhabitants. \* \* \* I hope this publication will produce a full answer, if we can make one. If it does, this publication will have had its use. No offence to the government is intended by it, and it is hoped none will be taken."

\* See the history of this song in the "Songs and Ballads of the American Revolution," pp. 36-40.

† Extract from the minutes of the Committee for the Province of Pennsylvania. The title of this work is, *A New Essay [By the Pennsylvanian Farmer] on the Constitutional power of Great Britain over the Colonies in America; with the resolves of the Committee for the Province of Pennsylvania, and their instructions to their Representatives in Assembly.*

‡ Belsham's *Memoirs of the Reign of George the Third*, vol. 8, page 65.

§ See the Journals of the Continental Congress. "The several addresses of this Congress," says Ramsay, "were executed in a masterly manner, and were well calculated to make friends to the colonies. But their petition to the king produced more solid advantages in favor of the American cause than any other of their productions. This was in a great measure carried through Congress by Mr. Dickinson. Several members, judging from the violence with which Parliament proceeded against the colonies, were of opinion that further petitions were nugatory; but this worthy citizen, a friend to both countries, and devoted to a reconciliation on constitutional principles, urged the expediency and policy of trying once more the effect of an humble, decent, and firm petition, to the common head of the empire. The high opinion that was conceived of his patriotism and abilities, induced the members to assent to the measure, though they generally conceived it to be labor lost. The petition agreed upon, was the work, of Mr. Dickinson's pen."—*History of the American Revolution*, vol. 1, page 212.

was impolitic to adopt it "without some preclusory trials of strength." However, on its adoption, he not only acquiesced in it, but engaged zealously in carrying into effect the measures necessary to sustain it; adding another proof of his sincere attachment to the liberties of his country, by marching with his regiment, a short time after the Declaration, to Elizabethtown, New Jersey, to meet the invading enemy, and serving as a private soldier on a similar expedition to the head of Elk. In October, 1777, he received from Mr. M'Kean, then President of Pennsylvania, a commission as Brigadier General, the duties of which he performed in a manner which elicited the applause of his countrymen.

In April, 1779, he was elected to Congress, and during the next month he wrote the address of that body to the States, upon the situation of public affairs; a production replete with the beauties of a master composer and the warmth of patriotic feeling. After describing the condition of the country, and calling upon the States to rescue it from the deplorable condition to which it had been reduced by the depreciated paper currency, a prodigality in the expenditure of public funds, and the exhaustion of the war, he concludes: "Fill up your battalions—be prepared in every part to repel the incursions of your enemies—place your several quotas in the Continental treasury—lend money for public uses—sink the emissions of your respective States—provide effectually for expediting the conveyance of supplies for your armies and fleets, and for your allies—prevent the produce of the country from being monopolized—effectually superintend the behavior of public officers—diligently promote piety, virtue, brotherly love, learning, frugality and moderation, and may you be approved before Almighty God, worthy of those blessings we devoutly wish you to enjoy."

Mr. Dickinson was elected to the Assembly of Delaware in 1780, and the same year he was chosen, by both branches of the legislature, President of that State. Two years after he was elected to the Presidency of the Supreme Executive Council of Pennsylvania, in which position he remained until October, 1785. To the advancement of learning he always lent a helping hand. Deeply indebted to education for the inestimable riches it had afforded him for the service of his country, he looked upon it as the foundation of true liberty and moral greatness. The act of Assembly incorporating a college, to be established in the borough of Carlisle, has happily perpetuated the remembrance of his munificent patronage of literature. It declares that, "In memory of the great and important services rendered to his country by his Excellency, John Dickinson, esq., President of the Supreme Executive Council, and in commemoration of his very liberal donation to the institution, the said college shall be for ever hereafter called and known by the name of *Dickinson College*."\*

On the meeting of the Convention for the formation of the Federal Constitution, Mr. Dickinson appeared as a delegate from Delaware. His exertions were well directed and efficient; nor were they confined to the Convention. When the Constitution was submitted to the several States for their approval, it met with violent opposition. In its defence, Mr. Dickinson published a series of letters, under the signature of Fabius. These are able papers, and form a valuable portion of our constitutional literature. In 1792 he was a member of the convention which formed the constitution of Delaware. In 1797, he published another series of letters under the signature of Fabius, in which he treated of the troubled state of affairs in France, and evinced the strongest sentiments of gratitude, and most ardent wishes for the welfare of that country.

Retiring from the anxieties of public life, he settled at Wilmington, Delaware, where he spent his declining years, surrounded by friends who loved him, and by his books, which were a consolation to him in old age, as they had been his delight throughout a well spent life. The last work that appeared from his pen was an address to the people of the United States, on *The Past, Present, and eventual Relations of that Country to France*. He died on the fourteenth of February, 1808, at the age of seventy-five years.

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\* National Portrait Gallery, article John Dickinson.

## SPEECH IN THE HOUSE OF ASSEMBLY.

Mr. Dickinson delivered this speech, while he was a member of the Assembly of the Province of Pennsylvania, on the twenty-fourth of May, 1764; on occasion of a petition, drawn up by order, and then under consideration of that body; praying the King for a change of the government of the Province.\*

MR. SPEAKER: † When honest men apprehend their country to be injured, nothing is more natural than to resent and complain; but when they enter into consideration of the means for obtaining redress, the same virtue that gave the alarm, may sometimes, by causing too great a transport of zeal, defeat its own purpose; it being expedient for those who deliberate of public affairs, that their minds should be free from all violent passions. These emotions blind the understanding; they weaken the judgment. It therefore frequently happens, that resolutions formed by men thus agitated, appear to them very wise, very just, and very salutary; while others, not influenced by the same heats, condemn those determinations as weak, unjust, and dangerous. Thus, sir, in councils it will always be found useful to guard against even the indignation that arises from integrity.

More particularly are we bound to observe the utmost caution in our conduct, as the experience of many years may convince us, that all our actions undergo the strictest scrutiny. Numerous are the instances, that might be mentioned, of rights vindicated and equitable demands made in this province, according to the opinions entertained here, that in Great Britain have been adjudged to be illegal attempts and pernicious pretensions.

These adjudications are the acts of persons vested with such dignity and power, as claim some deference from us; and hence it becomes not unnecessary to consider, in what light the measures ‡ now proposed may appear to those whose sentiments, from the constitution of our

government, it will always be prudent to regard.

But on this important occasion, we ought not to aim only at the approbation of men, whose authority may censure and control us. More affecting duties demand our attention. The honor and welfare of Pennsylvania depending on our decisions, let us endeavor so to act, that we may enjoy our own approbation in the cool and undisturbed hours of reflection; that we may deserve the approbation of the impartial world; and of posterity, who are so much interested in the present debate.

No man, sir, can be more clearly convinced than I am of the inconveniences arising from a strict adherence to proprietary instructions. We are prevented from demonstrating our loyalty to our excellent Sovereign, and our affection to our distressed fellow subjects, unless we will indulge the proprietors with a distinct and partial mode of taxation, by which they will save perhaps four or five hundred pounds a year, that ought to go in ease of our constituents.

This is granted on all sides to be unequal; and has therefore excited the resentment of this House. Let us resent, but let our resentment bear proportion to the provocation received; and not produce, or even expose us to the peril of producing, effects more fatal than the injury of which we complain. If the change of government now meditated, can take place, with all our privileges preserved, let it instantly take place; but if they must be consumed in the blaze of royal authority, we shall pay too great a price for our approach to the throne; too great a price for obtaining (if we should obtain) the addition of four or five hundred pounds to the proprietary tax; or indeed for any emolument likely to follow from the change.

I hope, I am not mistaken, when I believe, that every member in this House feels the same reverence that I do, for these inestimable rights. When I consider the spirit of liberty that breathes in them, and the flourishing state to which this province hath risen in a few years under them, I am extremely desirous that they should be transmitted to future ages; and I cannot suppress my solicitude, while steps are taken that tend to bring them all into danger. Being assured that this House will always think an attempt to change this government too hazardous, unless these privileges can be perfectly secured, I shall beg leave to mention the reasons by which I have been convinced, that such an attempt ought not now to be made.

\* The change attempted did not take place. On the fourth of March, 1764, George Grenville, then minister, and the House of Commons, on his motion, began their hostile operations against the British colonies on the American continent.

This speech was made in less than three months after, about a year and a half before the meeting of the first Congress at New York, on account of the Stamp Act; describes the sentiments of administration concerning colonial government, takes notice of the then meditated innovations, and was followed by a regular course of such measures as were apprehended and alluded to.—*Note by the author of the speech.*

† Isaac Norris, of Fair Hill, Philadelphia county, Pa., the daughter of whom Mr. Dickinson married in 1770, was the speaker of the House of Assembly at that time.

‡ The controversy between the provinces and the proprietaries was, Whether the estates of the proprietaries should

be taxed as the estates of other persons were. The proprietaries claimed an exemption, and were supported in their claim by the British ministers. The Assembly took this opportunity to attempt a change of the government from proprietary to royal.

It seems to me, sir, that a people, who intend an innovation of their government, ought to choose the most proper time and the most proper method for accomplishing their purposes; and ought seriously to weigh all the probable and possible consequences of such a measure.

There are certain periods in public affairs, when designs may be executed much more easily and advantageously, than at any other. It hath been by a strict attention to every interesting circumstance; a careful cultivation of every fortunate occurrence; and patiently waiting till they have ripened into a favorable conjuncture, that so many great actions have been performed in the political world.

It was through a rash neglect of this prudence, and too much eagerness to gain his point, that the Duke of Monmouth destroyed his own enterprise, and brought himself dishonorably to the block, though every thing then verged towards a revolution. The Prince of Orange, with a wise delay pursued the same views, and gloriously mounted a throne.

It was through a like neglect of this prudence, that the Commons of Denmark, smarting under the tyranny of their nobility, in a fit of revengeful fury suddenly surrendered their liberties to their king; and ever since, with unavailing grief and useless execrations, have detested the mad moment that slipped upon them the shackles of slavery, which no struggles can shake off. With more deliberation, the Dutch erected a stadtholdership, that hath been of signal service to their State.

That excellent historian and statesman Tacitus, whose political reflections are so justly and universally admired, makes an observation in his third annal, that seems to confirm these remarks. Having mentioned a worthy man of great abilities, whose ambitious ardor hurried him into ruin, he uses these words, "quod multos etiam bonos pessum dedit, qui spretis quæ tarda cum securitate, præmetura vel cum exitio properant." "Which misfortune has happened to many good men, who, despising those things which they might slowly and safely attain, seize them too hastily, and with fatal speed, rush upon their own destruction."

If then, sir, the best intentions may be disappointed by too rapid a prosecution of them, many reasons induce me to think, that this is not the proper time to attempt the change of our government.

It is too notorious and too melancholy a truth, that we now labor under the disadvantage of royal and ministerial displeasure. The conduct of this province during the late war, has been almost continually condemned at home. We have been covered with the reproaches of men, whose stations give us just cause to regard their reproaches. The last letters from his majesty's secretary of state, prove that the reputation of the province has not yet revived. We are therein expressly charged with double-dealing, disrespect for his majesty's

orders, and, in short, accusations, that show us to be in the utmost discredit. Have we the least reason to believe, when the transactions of this year, and the cause of our application for a change, are made known to the king and his ministers, that their resentment will be waived? Let us not flatter ourselves. Will they not be more incensed, when they find the public service impeded, and his majesty's dominions so long exposed to the ravages of merciless enemies, by our inactivity and obstinacy, as it will be said? For this, I think, hath been the constant language of the ministry on the like occasions. Will not their indignation rise beyond all bounds, when they understand that our hitherto denying to grant supplies, and our application for a change, proceed from the governor's strict adherence to the terms of the stipulations, so solemnly made, and so repeatedly approved by the late and present king?

But I may, perhaps, be answered, "that we have agreed to the terms of the stipulations according to their true meaning, which the governor refuses to do." Surely, sir, it will require no slight sagacity in distinguishing, no common force of argument to persuade his Majesty and his council, that the refusal to comply with the true meaning of the stipulations proceeds from the governor, when he insists on inserting in our bill the very words and letters of those stipulations.

"But these stipulations were never intended to be inserted, verbatim, in our bills, and our construction is the most just." I grant it appears so to us, but much I doubt whether his Majesty's council will be of the same opinion. That Board and this House have often differed as widely in their sentiments. Our judgment is founded on the knowledge we have of facts, and of the purity of our intentions. The judgment of others is founded on the representations made to them of those facts and intentions. These representations may be unjust, and, therefore, the decisions that are formed upon them may be erroneous. If we are rightly informed, we are represented as the mortal enemies of the proprietors, who would tear their estates to pieces unless some limit was fixed to our fury. For this purpose the second and third articles of the stipulation were formed. The inequality of the mode was explained and enlarged upon by the provincial council, but in vain. I think I have heard a worthy member, who lately returned from England, mention these circumstances.

If this be the case, what reasonable hope can we entertain of a more favorable determination now? The proprietors are still living. Is it not highly probable that they have interest enough, either to prevent the change, or to make it on such terms as will fix upon us, for ever, those demands that appear so extremely just to the present ministers? One of the proprietors appears to have great intimacy and influence with some very considerable members of his Majesty's council. Many men of the



highest character, if public report speaks truth, are now endeavoring to establish proprietary governments, and, therefore, probably may be more readily inclined to favor proprietary measures. The very gentleman who formed the articles of the stipulations, are now in power, and, no doubt, will enforce their own acts in the strictest manner. On the other hand, every circumstance that now operates against us, may, in time, turn in our favor. We may, perhaps, be fortunate enough to see the present prejudices against us worn off: to recommend ourselves to our sovereign, and to procure the esteem of some of his ministers. I think I may venture to assert, that such a period will be infinitely more proper than the present, for attempting a change of our government.

With the permission of the House, I will now consider the manner in which this attempt is carried on; and I must acknowledge that I do not, in the least degree, approve of it.

The time may come when the weight of this government may grow too heavy for the shoulders of a subject; at least too heavy for those of a woman or an infant. The proprietary family may be so circumstanced as to be willing to accept of such an equivalent for the government from the Crown, as the Crown may be willing to give. Whenever this point is agitated, either on a proposal from the Crown or proprietors, this province may plead the cause of her privileges with greater freedom and with greater probability of success than at present. The royal grant; the charter founded upon it; the public faith pledged to the adventurers for the security of those rights to them and their posterity, whereby they were encouraged to combat the dangers, I had almost said, of another world; to establish the British power in remotest regions, and add inestimable dominions, with the most extensive commerce to their native country; the high value and veneration we have for these privileges; the afflictive loss and misfortune we should esteem it, to be deprived of them, and the unhappiness in which his majesty's faithful subjects in this province would thereby be involved; our inviolable loyalty and attachment to his majesty's person and illustrious family, whose sovereignty has been so singularly distinguished by its favorable influence on the liberties of mankind.—All these things may then be properly insisted on. If urged with that modest, heartfelt energy, with which good men should always vindicate the interests of their country, I should not despair of a gracious attention to our humble requests. Our petition in such a case would be simple, respectful, and perhaps, affecting. But in the present mode of proceeding, it seems to me, that we preclude ourselves from every office of decent duty to the most excellent of kings, and from that right of earnestly defending our privileges, which we should otherwise have. The foundation of this attempt, I am apprehensive, will appear to others peculiarly unfortunate. In a sudden

passion it will be said, against the proprietors, we call out for a change of government; not from reverence for his majesty; not from a sense of his paternal goodness to his people; but because we are angry with the proprietors, and tired of a dispute founded on an order approved for his majesty, and his royal grandfather.

Our powerful friends on the other side of the Atlantic, who are so apt to put the kindest constructions on our actions, will, no doubt, observe, "that the conduct of the people of Pennsylvania must be influenced by very extraordinary councils, since they desire to come more immediately under the king's command, because they will not obey those royal commands that have been already signified to them."

But here it will be said, nay, it has been said, and the petition before the House is drawn accordingly; "we will not allege this dispute with the governor on the stipulations, but the general inconveniences of a proprietary government, as the cause of our desiring a change." 'Tis true we may act in this artful manner, but what advantages shall we gain by it? Though we should keep the secret, can we seal up the lips of the proprietors? Can we recall our messages to the governor? Can we annihilate our own resolves? Will not all,—will not any of these discover the true cause of the present attempt?

Why then should we, unnecessarily, invite fresh invectives in the very beginning of a most important business, that to be happily concluded, requires all the favor we can procure and all the dexterity we can practise?

We intend to surround the throne with petitions, that our government may be changed from proprietary to royal. At the same time we mean to preserve our privileges; but how are these two points to be reconciled?

If we express our desire for the preservation of our privileges in so general or faint a manner, as may induce the king to think they are of no great consequence to us, it will be nothing less than to betray our country.

If, on the other hand, we inform his majesty "that though we request him to change the government, yet we insist on the preservation of our privileges," certainly it will be thought an unprecedented style of petitioning the Crown, that humbly asks a favor and boldly prescribes the terms on which it must be granted.

How, then, shall we act? Shall we speak, or shall we suppress our sentiments? The first method will render our request incoherent; the second will render it dangerous. Some gentlemen are of opinion, that these difficulties may be solved, by intrusting the management of this affair to an agent; but I see no reason to expect such an effect. I would first observe, that this matter is of too prodigious consequence to be trusted to the discretion of an agent. But if it shall be committed by this House, the proper guardian of the public liberties, to other hands, this truth must, at some time or other

be disclosed: "that we will never consent to a change, unless our privileges are preserved." I should be glad to know, with what finesse this matter is to be conducted. Is the agent to keep our petition to the Crown in his pocket, till he has whispered to the ministry? Will this be justifiable? will it be decent? Whenever he applies to them, I presume they will desire to know his authority for making such an application. Then our petition must appear; and whenever it does appear, either at first or last, that and the others transmitted with it, I apprehend, will be the foundation of any resolutions taken in the king's council.

Thus, in whatever view this transaction is considered, shall we not still be involved in the dilemma already mentioned, "of begging a favor from his majesty's goodness, and yet showing a distrust that the royal hand, stretched out at our own request, for our relief, may do us injury?"

Let me suppose, and none can offer the least proof of this supposition being unreasonable, that his majesty will not accept of the government, clogged, as it will be said, with privileges inconsistent with the royal rights: how shall we act then? We shall have our choice of two things: one of them destructive, the other dishonorable. We may either renounce the laws and liberties framed and delivered down to us by our careful ancestors, or we may tell his majesty, with a surly discontent, "that we will not submit to his implored protection, but on such conditions as we please to impose on him." Is not this the inevitable alternative to which we shall reduce ourselves?

In short, sir, I think the farther we advance in the path we are now in, the greater will be the confusion and danger in which we shall engage ourselves. Any body of men acting under a charter, must surely tread on slippery ground, when they take a step that may be deemed a surrender of that charter. For my part, I think the petitions that have been carried about the city and country to be signed, and are now lying on the table, can be regarded in no other light, than as a surrender of the charter, with a short, indifferent hint annexed, of a desire that our privileges may be spared, if it shall be thought proper. Many striking arguments may, in my opinion, be urged, to prove, that any request made by this House for a change, may with still greater propriety be called a surrender. The common observation, "that many of our privileges do not depend on our charter only, but are confirmed by laws approved by the Crown," I doubt will have but little weight with those who will determine this matter.

It will readily be replied, "that these laws were founded on the charter; that they were calculated for a proprietary government, and for no other, and approved by the Crown in that view alone; that the proprietary government is now acknowledged, by the people living under it, to be a bad government, and the

Crown is entreated to accept a surrender of it that therefore, by thus abolishing the proprietary government, every thing founded upon it must, of consequence, be also abolished."

However, if there should be any doubts in the law on these points, there is an easy way to solve them.

These reflections, sir, naturally lead me to consider the consequences that may attend a change of our government; which is the last point I shall trouble the House upon at this time.

It is not to be questioned, but that the ministry are desirous of effecting the immediate government of this province advantageously in the Crown. It is true, they do not choose to act arbitrarily, and tear away the present government from us, without our consent. This is not the age for such things. But let us only furnish them with a pretext, by pressing petitions for a change; let us only relinquish the hold we now have, and in an instant we are precipitated from that envied height where we now stand. The affair is laid before the Parliament; the desires of the ministry are insinuated; the rights of the Crown are vindicated, and an act passes to deliver us at once from the government of proprietors and the privileges we claim under them.

Then, sir, we who in particular have presented to the authors of the fatal change, this long-wished for opportunity of effecting it, shall for our assistance be entitled to their thanks. —Thanks! which I am persuaded every worthy member of this House would abhor to deserve, and would scorn to receive.

It seems to be taken for granted, that by a change of government, we shall obtain a change of those measures which are so displeasing to the people of this province; that justice will be maintained by an equal taxation of the proprietary estates, and that our frequent dissensions will be turned into peace and happiness.

These are effects, indeed, sincerely to be wished for by every sensible, by every honest man; but reason does not always teach us to expect the warm wishes of the heart. Could our gracious sovereign take into consideration the state of every part of his extended dominions, we might expect redress of every grievance: for, with the most implicit conviction, I believe he is as just, benevolent, and amiable a prince, as heaven ever granted in its mercy to bless a people. I venerate his virtues beyond all expression. But his attention to our particular circumstances being impossible, we must receive our fate from ministers: and from them I do not like to receive it.

We are not the subjects of ministers; and therefore it is not to be wondered at, if they do not feel that tenderness for us, that a good prince will always feel for his people. Men are not born ministers: their ambition raises them to authority; and when possessed of it, one established principle with them seems to be, "never to deviate from a precedent of power."

Did we not find, in the late war, though we exerted ourselves in the most active manner in the defence of his majesty's dominions, and in promoting the service of the Crown, every point in which the proprietors thought fit to make any opposition, decided against us? Have we not also found, since the last disturbance of the public peace by our savage enemies, the conduct of the late governor highly applauded by the ministry, for his adherence to those very stipulations now insisted on; and ourselves subjected to the bitterest reproaches, only for attempting to avoid burthens that were thought extremely grievous? Other instances of the like kind I pass over, to avoid a tedious recapitulation.

Since, then, the gale of ministerial favor has in all seasons blown propitious to proprietary interests, why do we now fondly flatter ourselves, that it will suddenly shift its quarter? Why should we, with an amazing credulity, now fly for protection to those men, trust every thing to their mercy, and ask the most distinguishing favors from their kindness, from whom we complained, a few months ago, that we could not obtain the most reasonable requests? Surely, sir, we must acknowledge one of these two things; either that our complaint was then unjust, or that our confidence is now unwarranted. For my part, I look for a rigid perseverance in former measures. With a new government, I expect new disputes. The experience of the royal colonies convinces me, that the immediate government of the Crown is not a security for that tranquillity and happiness we promise ourselves from a change. It is needless for me to remind the House of all the frequent and violent controversies that have happened between the king's governors in several provinces, and their Assemblies. At this time, if I am rightly informed, Virginia is struggling against an instruction that will be attended, as that colony apprehends, with the most destructive consequences, if carried into execution.

Indeed, sir, it seems vain to expect, where the spirit of liberty is maintained among a people, that public contests should not also be maintained. Those who govern, and those who are governed, seldom think they can gain too much on one another. Power is like the ocean; not easily admitting limits to be fixed on it. It must be in motion. Storms, indeed, are not desirable, but a long dead calm is not to be looked for; perhaps not to be wished for. Let not us then, in expectation of smooth seas and an undisturbed course, too rashly venture our little vessel that has safely sailed round our own well known shores, upon the midst of the untried deep, without being first fully convinced that her make is strong enough to bear the weather she may meet with, and that she is well provided for so long and so dangerous a voyage.

No man, sir, amongst us hath denied, or will deny, that this province must stake on the

event of the present attempt, liberties that ought to be immortal. Liberties founded on the acknowledged rights of human nature, and restrained in our mother country, only by an unavoidable necessity of adhering in some measure to long-established customs. Thus has been formed between old errors and hasty innovations, an entangled chain, that our ancestors either had not moderation, or leisure enough to untwist.

I will now briefly enumerate, as well as I can recollect, the particular privileges of Pennsylvania.

In the first place we here enjoy that best and greatest of all rights, a perfect religious freedom.

Posts of honor and profit are unfettered with oaths or tests, and, therefore, are open to men whose abilities, strict regard to their conscientious persuasion, and unblemished characters, qualify them to discharge their duties with credit to themselves and advantage to their country.

The same wisdom of our laws has guarded against the absurdity of granting greater credit even to villains, if they will swear, than to men of virtue, who from religious motives cannot. Therefore those who are conscientiously scrupulous of taking an oath, are admitted as witnesses in criminal cases. Our legislation suffers no checks from a council instituted\* in fancied imitation of the House of Lords. By the right of sitting on our own adjournments, we are secure of meeting when the public good requires it: and of not being dismissed when private passions demand it. At the same time the strict discharge of the trust committed to us, is inferred by the short duration of our power, which must be renewed by our constituents every year. Nor are the people stripped of all authority in the execution of laws. They enjoy the satisfaction of having some share, by the appointment of provincial commissioners, in laying out the money which they raise, and of being, in this manner, assured that it is applied to the purposes for which it was granted. They also elect sheriffs and coroners, officers of so much consequence in every determination that affects honor, liberty, life, and property.

Let any impartial person reflect how contradictory some of these privileges are to the principles of the English constitution, and how directly opposite others of them are to the settled prerogatives of the Crown; and then consider what probability we have of retaining them on a requested change; that is, of continuing in fact a proprietary government, though we humbly pray the king to change this government into royal. Not unaptly, in my opinion, the connection between the proprietary family and this province, may be regarded as a marriage. Our privileges may be called the fruits of that marriage. The domestic peace of this family, it is true, has not been un-

\* Appointed by the Crown.

vexed with quarrels and complaints: but the pledges of their affection ought always to be esteemed, and whenever the parents on an imprudent request shall be divorced, much I fear that their issue will be declared illegitimate. This I am well persuaded of, that surprising must our behavior appear to all men, if, in the instant when we apply to his majesty for relief from what we think oppression, we should discover a resolute disposition to deprive him of the uncontroverted prerogatives of his royal dignity.

At this period, when the administration is regulating new colonies, and designing, as we are told, the strictest reformati<sup>o</sup>ns\* in the old, it is not likely that they will grant an invidious distinction in our favor. Less likely is it, as that distinction will be liable to so many and such strong constitutional objections; and when we shall have the weight, both of the clergy and ministry, and the universally received opinions of the people of our mother country to contend with.

I mean not, sir, the least reflection on the church of England. I reverence and admire the purity of its doctrine, and the moderation of its temper. I am convinced that it is filled with learned and with excellent men: but all zealous persons think their own religious tenets the best, and would willingly see them embraced by others. I therefore apprehend that the dignified and reverend gentlemen of the church of England, will be extremely desirous to have that church as well secured, and as much distinguished as possible in the American colonies; especially in those colonies where it is overborne, as it were, by dissenters. There never can be a more critical opportunity for this purpose than the present. The cause of the church will besides be connected with that of the Crown, to which its principles are thought to be more favorable than those of the other professions.

We have received certain information that the conduct of this province, which has been so much censured by the ministry, is attributed to the influence of one religious society. We also know that the late tumultuous and riotous proceedings, represented in so strong a light by the petitions now before the House, have been publicly ascribed to the influence of another religious society. Thus the blame of every thing disreputable to this province is cast on one or the other of these dissenting sects. Circumstances that, I imagine, will neither be forgotten nor neglected.

We have seen the event of our disputes concerning the proprietary interests, and it is not to be expected that our success will be greater when our opponents become more numerous, and will have more dignity, more power, and, as they will think, more law on their side.

These are the dangers, sir, to which we are now about to expose those privileges in which

we have hitherto so much gloried. Wherefore? To procure two or three, perhaps, four or five hundred pounds a year, (for no calculation has carried the sum higher,) from the proprietors, for two or three, or four or five years, for so long, and something longer perhaps, the taxes may continue. But are we sure of gaining this point? We are not. Are we sure of gaining any other advantage? We are not. Are we sure of preserving our privileges? We are not. Are we under the necessity of pursuing the measure proposed at this time? We are not.

Here, sir, permit me to make a short pause. Permit me to appeal to the heart of every member in this House, and to entreat him to reflect how far he can be justifiable in giving his voice, thus to hazard the liberties secured to us by the wise founders of this province; peaceably and fully enjoyed by the present age, and to which posterity is so justly entitled.

But, sir, we are told there is no danger of losing our privileges if our government should be changed, and two arguments are used in support of this opinion. The first is, "that the government of the crown is exercised with so much lenity in Carolina, and the Jerseys." I cannot perceive the least degree of force in this argument. As to Carolina I am not a little surprised that it should be mentioned on this occasion, since I never heard of any privileges that colony enjoys, more than the other royal governments in America. The privileges of the Jerseys are of a different nature from many of which we are possessed, and are more consistent with the royal prerogative.

Indeed, I know of none they have, except that the people called Quakers may be witnesses in criminal cases, and may bear offices. Can this indulgence, shown to them for a particular reason, and not contradictory to the rights of the Crown, give us any just cause to expect the confirmation of privileges directly opposite to those rights, and for confirming which no such reason exists. But, perhaps, the gentlemen who advance this argument mean that we shall purchase a change at a cheap price, if we are only reduced to the same state with the Jerseys. Surely, sir, if this be their meaning, they entirely forget those extraordinary privileges which some time ago were mentioned.

How many must we in such a case renounce? I apprehend it would prove an argument of little consolation to these gentlemen, if they should lose three-fourths of their estates, to be told, that they still remain as rich as their neighbors, and have enough to procure all the necessaries of life.

It is somewhat remarkable, that this single instance of favor in permitting an affirmation instead of an oath, in a single province, should be urged as so great an encouragement to us, while there are so many examples of another kind to deter us. In what royal government, besides the Jerseys, can one of the people call

\* Some late acts of Parliament show what strict reformati<sup>o</sup>ns are to be made in the colonies.

ed Quakers, be a witness in criminal cases, and bear offices? \* In no other. What can be the reason of this distinction in the Jerseys? Because in the infancy of that colony, when it came under the government of the Crown, there was, as appears from authentic vouchers, an absolute necessity from the scarcity of other proper persons, to make use of the people called Quakers in public employments. Is there such a necessity in this province? Or can the ministry be persuaded, that there is such a necessity? No, sir, those from whom they will receive their information, will grant no such thing; and therefore I think there is the most imminent danger, in case of a change, that the people of this society will lose the exercise of those rights, which, though they are entitled to as men, yet such is the situation of human affairs, they with difficulty can find a spot on the whole globe, where they are allowed to enjoy them. It will be an argument of some force, I am afraid, that the Church of England can never expect to raise its head among us, while we are encouraged, as it will be said, in dissension: but if an oath be made necessary for obtaining offices of honor and profit, it will then be expected that any of the people called Quakers, who are tempted to renounce their principles, will undoubtedly make an addition to the established church.

If any other consideration than that which has been mentioned, was regarded in granting that indulgence in the Jerseys, though no other is expressed, it seems not improbable, that the nearness of this province might have had some weight, as from its situation it afforded such strong temptations to the inhabitants of the Jerseys to remove hither, had they been treated with any severity.

Their government, in some measure, was formed in imitation of our government; but when this is altered, the English constitution must be the model, by which it will be formed.

Here it will be said, "this cannot be done but by the Parliament, and will a British Parliament do such an act of injustice, as to deprive us of our rights?" This is the second argument used to prove the safety of the measures now proposed.

Certainly the British Parliament will not do what they think an unjust act; but I cannot persuade myself, that they will think it unjust, to place us on the same footing with themselves. It will not be an easy task to convince them, that the people of Pennsylvania ought to be distinguished from all other subjects, under his majesty's immediate government; or that such a distinction can answer any good purpose. May it not be expected that they will say, "no people can be freer than ourselves,—every thing more than we enjoy, is licentiousness, not liberty; any indulgencies shown to the colonies heretofore were like the indulgen-

cies of parents to their infants; they ought to cease with that tender age; and as the colonies grow up to a more vigorous state, they ought to be carefully disciplined, and all their actions regulated by strict laws. Above all things, it is necessary, that the prerogative should be exercised with its full force in our American provinces, to restrain them within due bounds, and secure their dependence on this kingdom." \*

I am afraid that this will be the opinion of the Parliament, as it has been in every instance, the undeviating practice of the ministry.

But, sir, it may be said, "these reasons are not conclusive; they do not demonstratively prove, that our privileges will be endangered by a change." I grant the objection; but what stronger reasons, what clearer proofs are there, that they will not be endangered by a change?

They are safe now; and why should we engage in an enterprise that will render them uncertain? If nothing will content us but a revolution brought about by ourselves, surely we ought to have made the strictest inquiries what terms we may expect; and to have obtained from the ministry some kind of security for the performance of those terms.

These things might have been done. They are not done. If a merchant will venture to travel with great riches into a foreign country, without a proper guide, it certainly will be advisable for him to procure the best intelligence he can get, of the climate, the roads, the difficulties, he will meet with, and the treatment he may receive.

I pray the House to consider, if we have the slightest security that can be mentioned, except opinion (if that is any), either for the preservation of our present privileges, or gaining a single advantage from a change. Have we any writing? have we a verbal promise from any minister of the Crown? We have not. I cannot, therefore, conceal my astonishment, that gentlemen should require a less security for the invaluable rights of Pennsylvania, than they would demand for a debt of five pounds. Why should we press forward with this unexampled hurry, when no benefit can be derived from it? Why should we have any aversion to deliberation and delay, when no injury can attend them?

It is scarcely possible in the present case, that we can spend too much time in forming resolutions, the consequences of which are to be perpetual. If it is true, as some aver, that we can now obtain an advantageous change of our government; I suppose it will be also true next week, next month, and next year; but if they are mistaken, it will be early enough, whenever it happens, to be disappointed and to repent. I am not willing to run risks in a matter of such prodigious importance, on the

\* It is said that a Quaker was lately committed to jail, in New York, because he would not swear in a criminal case.

\* The subsequent conduct of Great Britain has fully evinced her resolution to adhere to such political maxims as these.

credit of any man's opinion, when by a small delay, that can do no harm, the steps we are to take may become more safe. Gideon, though he had conversed with "an angel of the Lord," would not attempt to relieve his countrymen, then sorely oppressed by the Midianites, lest he should involve them in greater miseries, until he was convinced by two miracles, that he should be successful. I do not say, we ought to wait for miracles; but I think, we ought to wait for some things which will be next kin to a miracle; I mean some sign of favorable disposition in the ministry towards us. I should like to see an olive leaf at least, brought to us before we quit our ark.

Permit me, sir, to make one proposal to the House. We may apply to the Crown now, as freely as if we were under its immediate government. Let us desire his majesty's judgment on the point, that has occasioned this unhappy difference between the two branches of the legislature.\* This may be done without any violence, without any hazard to our constitution. We say, the justice of our demands is clear as light; every heart must feel the equity of them.

If the decision be in our favor, we gain a considerable victory; the grand obstruction of the public service is removed; and we shall have more leisure to carry our intentions coolly into execution. If the decision be against us, I believe the most zealous of us will grant it would be madness to expect success in any other contest. This will be a single point, and cannot meet with such difficulties, as the procuring a total alteration of the government. Therefore by separating it from other matters, we shall soon obtain a determination, and know what chance we have of succeeding in things of greater value. Let us try our fortune. Let us take a cast or two of the dice for smaller matters, before we dip deeply. Few gamesters are of so sanguine a temper as to stake their whole wealth on one desperate throw at first. If we are to play with the public happiness, let us act at least with as much deliberation, as if we were betting out of our private purses.

Perhaps a little delay may afford us the pleasure of finding our constituents more unanimous in their opinions on this interesting occasion, and I should choose to see a vast majority of them join, with a calm resolution, in the measure, before I should think myself justifiable in voting for it, even if I approved of it.

The present question is utterly foreign from the purposes for which we were sent into this place. There was not the least probability, at

the time we were elected, that this matter could come under our consideration. We are not debating how much money we shall raise, what laws we shall pass for the regulation of property, nor on any thing of the same kind that arises in the usual parliamentary course of business. We are now to determine whether a step shall be taken that may produce an entire change of our constitution.

In forming this determination, one striking reflection should be preserved in our minds; I mean, "that we are the servants of the people of Pennsylvania,"—of that people who have been induced by the excellence of the present constitution, to settle themselves under its protection.

The inhabitants of remote countries, impelled by that love of liberty which all-wise Providence has planted in the human heart, deserting their native soil; committed themselves, with their helpless families, to the mercy of winds and waves, and braved all the terrors of an unknown wilderness, in hopes of enjoying in these woods the exercise of those invaluable rights, which some unhappy circumstances had denied to mankind in every other part of the earth.

Thus, sir, the people of Pennsylvania may be said to have purchased an inheritance, in its constitution, at a prodigious price; and I cannot believe, unless the strongest evidence be offered, that they are now willing to part with that, which has cost them so much toil and expense.

They have not hitherto been disappointed in their wishes. They have obtained the blessings they sought for.

We have received these seats by the free choice of this people under this constitution, and to preserve it in its utmost purity and vigor, has always been deemed by me a principal part of the trust committed to my care and fidelity. The measure now proposed has a direct tendency to endanger this constitution, and, therefore, in my opinion, we have no right to engage in it without the almost universal consent of the people, expressed in the plainest manner.

I think I should improperly employ the attention of this House if I should take up much time in proving that the deputies of a people have not a right, by any law, divine or human, to change the government under which their authority was delegated to them, without such a consent as has been mentioned. The position is so consonant to natural justice and common sense, that I believe it never has been seriously controverted. All the learned authors that I recollect to have mentioned this matter, speak of it as an indisputable maxim.

It may be said, perhaps, in answer to this objection, "that it is not intended to change the government, but the governor." This, I apprehend, is a distinction only in words. The government is certainly to be changed from proprietary to royal, and whatever may be

\* This point was one of the stipulations approved by the Crown, in favor of the proprietors, with respect to the taxation of their estate. The governor, one branch of the legislature, insisted upon inserting in the bill then under consideration, the words of the stipulation, and thus adhered to the stipulation. The House of Assembly, the other branch of the legislature, insisted upon taxing the proprietary state, without being thus bound.

intended, the question is, whether such a change will not expose our present privileges to danger.

It may also be said, "that the petitions lying on the table are a proof of the people's consent." Can petitions, so industriously carried about, and after all the pains taken, signed only by about thirty-five hundred persons, be looked on as the plainest expressions of the almost universal consent of the many thousands that fill this province? No one can believe it.

It cannot be denied, sir, that much the greatest part of the inhabitants of this province, and among them men of large fortunes, good sense, and fair characters, who value very highly the interest they have in the present constitution, have not signed these petitions, and as there is reason to apprehend, are extremely averse to a change at this time. Will they not complain of such a change? And if it is not attended with all the advantages they now enjoy, will they not have reason to complain? It is not improbable that this measure may lay the foundation of more bitter and more lasting dissensions among us, than any we have yet experienced.

Before I close this catalogue of unhappy consequences, that I expect will follow our request of a change, I beg leave to take notice of the terms of the petition that is now under the consideration of the House.

They equally excite in my breast, surprise, and grief, and terror. This poor province is already sinking under the weight of the discredit and reproaches, that by some fatality, for several years past, have attended our public measures; and we not only seize this unfortunate season to engage her in new difficulties, but prepare to pour on her devoted head a load that must effectually crush her. We inform the king, by this petition, that Pennsylvania is become a scene of confusion and anarchy; that armed mobs are marching from one place to another; that such a spirit of violence and riot prevails, as exposes his majesty's good subjects to constant alarms and danger; that this tumultuous disposition is so general that it cannot be controlled by any powers of the present government, and that we have not any hopes of returning to a state of peace and safety, but by being taken under his majesty's immediate protection.

I cannot think this a proper representation of the present state of this province. Near four months are elapsed since the last riot, and I do not perceive the least probability of our being troubled with any more. The rioters were not only successfully opposed and prevented from executing their purpose, but we have reason to believe that they were convinced of their error, and have renounced all thoughts of such wild attempts for the future. To whose throat is the sword now held? What life will be saved by this application? Imaginary danger! Vain remedy! Have we not sufficiently felt the effects of royal resentment? Is not the authority of the Crown fully enough

exercised over us? Does it become us to paint in the strongest colors the follies or the crimes of our countrymen? To require unnecessary protection against men who intend us no injury, in such loose and general expressions as may produce even the establishment of an armed force among us?

With unremitting vigilance, with undaunted virtue, should a free people watch against the encroachments of power, and remove every pretext for its extension.

We are a dependent colony, and we need not doubt that means will be used to secure that dependence. But that we ourselves should furnish a reason for settling a military establishment upon us, must exceed the most extravagant wishes of those who would be most pleased with such a measure.

We may introduce the innovation, but we shall not be able to stop its progress. The precedent will be pernicious. If a specious pretence is afforded for maintaining a small body of troops among us now, equally specious pretences will never be wanting hereafter, for adding to their numbers. The burthen that will be imposed on us for their support, is the most trifling part of the evil. The poison will soon reach our vitals, whatever struggles we may make to expel it.

*Hæret lateri lethalis arundo—*

The dart with which we are struck will still remain fixed—too firmly fixed for our feeble hands to draw it out. Our fruitless efforts will but irritate the wound; and at length we must tamely submit to — I quit a subject too painful to be dwelt upon.

These, sir, are my sentiments on the petition that has occasioned this debate. I think this neither the proper season, nor the proper method, for obtaining a change of our government. It is uncertain whether the measures proposed will place us in a better situation than we are now in, with regard to the point lately controverted; with respect to other particulars, it may place us in a worse. We shall run the risk of suffering great losses. We have no certainty of gaining any thing. In seeking a precarious, hasty, violent remedy for the present partial disorder, we are sure of exposing the whole body to danger. I cannot perceive the necessity of applying such a remedy. If I did, I would with the greatest pleasure pass over to the opinion of some gentlemen who differ from me, whose integrity and abilities I so much esteem, that whatever reasons at any time influence me to agree with them, I always receive a satisfaction from being on their side. If I have erred now, I shall comfort myself with reflecting, that it is an innocent error. Should the measures pursued in consequence of this debate be opposite to my opinion, and should they procure a change of government, with all the benefits we desire; I shall not envy the praise of others, who, by their fortunate cou-

rage and skill, have conducted us unhurt through the midst of such threatening dangers to the wished-for port. I shall cheerfully submit to the censure of having been too apprehensive of injuring the people of this province. If any severer sentence shall be passed upon me by the worthy, I shall be sorry for it; but this truth I am convinced of, that it will be much easier for me to bear the unmerited reflections of mistaken zeal, than the just reproaches of a guilty mind. To have concealed my real sentiments, or to have counterfeited such as I do not entertain, in a deliberation of so much consequence as the present, would have been the basest hypocrisy. It may perhaps be thought that this, however, would have

been the most politic part for me to have acted. It might have been so. But if policy requires that our words or actions should belie our hearts, I thank God that I detest and despise all its arts and all its advantages. A good man ought to serve his country, even though she resents his services. The great reward of honest actions is not the fame or profit that follows them, but the consciousness that attends them. To discharge, on this important occasion, the inviolable duty I owe the public, by obeying the unbiassed dictates of my reason and conscience, hath been my sole view; and my only wish now is, that the resolutions of this House, whatever they are, may promote the happiness of Pennsylvania.

#### THE DECLARATION ON TAKING UP ARMS.

On the twenty-third of June, 1775, Congress delegated John Rutledge, William Livingston, Doctor Franklin, John Jay, and Thomas Johnson, "to draw up a declaration, to be published by General Washington upon his arrival at the camp before Boston." The next day they reported a draft, which, after being debated, was referred for further consideration on the following Monday. On that day it was recommitted, and John Dickinson and Thomas Jefferson were added to the committee. The final draft was laid before Congress on the sixth of July, 1775, and after being "read and debated by paragraphs," was adopted. Mr. Dickinson was the author of the declaration, which is as follows:\*

If it was possible for men who exercise their reason to believe, that the Divine Author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over others, marked out by his infinite goodness and wisdom, as the objects of a legal domination never rightfully resistable, however severe and oppressive, the inhabitants of these colonies might at least require from the Parliament of Great Britain some evidence, that this dreadful authority has been granted to that body. But a reverence for our great Creator, principles of humanity, and the dictates of common sense, must convince all those who reflect upon the subject, that government was instituted to promote the welfare of mankind, and ought to be administered for the attainment of that end. The legislature of Great Britain, however, stimulated by an inordinate passion for a power not only unjustifiable, but which they know to be peculiarly reprobated by the

very constitution of that kingdom, and desperate of success in any mode of contest where regard should be had to truth, law, or right, have at length, deserting those, attempted to effect their cruel and impolitic purpose of enslaving these colonies by violence, and have thereby rendered it necessary for us to close with their last appeal from reason to arms. Yet, however blinded that assembly may be, by their intemperate rage for unlimited domination, so to slight justice and the opinion of mankind, we esteem ourselves bound by obligations of respect to the rest of the world, to make known the justice of our cause.

Our forefathers, inhabitants of the island of Great Britain, left their native land to seek on these shores a residence for civil and religious freedom. At the expense of their blood; at the hazard of their fortunes; without the least charge to the country from which they removed; by unceasing labor and an unconquerable spirit, they effected settlements in the distant and inhospitable wilds of America, then filled with numerous and warlike nations of barbarians. Societies or governments, vested with perfect legislatures, were formed under charters from the Crown, and an harmonious intercourse was established between the colonies and the kingdom from which they derived their origin. The mutual benefits of this union became in a short time so extraordinary as to excite astonishment. It is universally confessed, that the amazing increase of the wealth, strength, and navigation of the realm, arose from this source; and the minister who so wisely and successfully directed the measures of Great Britain in the late war, publicly declared that these colonies enabled her to triumph over her enemies. Towards the conclusion of that war, it pleased our sovereign to make a change in his counsels. From that fatal moment, the affairs of the British empire began to fall into

\* Journals of Congress, 1775.



confusion, and gradually sliding from the summit of glorious prosperity to which they had been advanced, by the virtues and abilities of one man, are at length distracted by the convulsions that now shake its deepest foundations. The new ministry, finding the brave foes of Britain, though frequently defeated, yet still contending, took up the unfortunate idea of granting them a hasty peace, and of then subduing her faithful friends.

These devoted colonies were judged to be in such a state as to present victories without bloodshed, and all the easy emoluments of statutable plunder. The unintermitted tenor of their peaceable and respectful behavior, from the beginning of colonization; their dutiful, zealous, and useful services during the war, though so recently and amply acknowledged in the most honorable manner by his majesty, by the late king and by parliament, could not save them from the meditated innovations. Parliament was influenced to adopt the pernicious project, and assuming a new power over them, have, in the course of eleven years, given such decisive specimens of the spirit and consequences attending this power, as to leave no doubt concerning the effects of acquiescence under it. They have undertaken to give and grant our money without our consent, though we have ever exercised an exclusive right to dispose of our own property; statutes have been passed for extending the jurisdiction of courts of admiralty, and vice-admiralty, beyond their ancient limits; for depriving us of the accustomed and inestimable privilege of trial by jury in cases affecting both life and property; for suspending the legislature of one of the colonies; for interdicting all commerce to the capital of another, and for altering, fundamentally, the form of government established by charter and secured by acts of its own legislature, solemnly confirmed by the Crown; for exempting the "murderers" of colonists from legal trial, and in effect, from punishment; for erecting in a neighboring province, acquired by the joint arms of Great Britain and America, a despotism dangerous to our very existence, and for quartering soldiers upon the colonists in time of profound peace. It has also been resolved in parliament, that colonists charged with committing certain offences, shall be transported to England to be tried.

But why should we enumerate our injuries in detail? By one statute it is declared that parliament can "of right, make laws to bind us in all cases whatsoever." What is to defend us against so enormous, so unlimited a power? Not a single man of those who assume it is chosen by us, or is subject to our control or influence; but on the contrary they are all of them exempt from the operation of such laws, and an American revenue, if not diverted from the ostensible purposes for which it is raised, would actually lighten their own burdens, in proportion as they increase ours. We saw the misery to which such despotism would reduce

us. We, for ten years, incessantly and ineffectually besieged the throne as supplicants; we reasoned, we remonstrated with parliament in the most mild and decent language.

Administration, sensible that we should regard these oppressive measures as freemen ought to do, sent over fleets and armies to enforce them. The indignation of the Americans was roused, it is true, but it was the indignation of a virtuous, loyal and affectionate people. A congress of delegates from the united colonies was assembled at Philadelphia, on the fifth day of last September. We resolved again to offer an humble and dutiful petition to the king, and also addressed our fellow-subjects of Great Britain. We have pursued every temperate, every respectful measure; we have even proceeded to break off our commercial intercourse with our fellow-subjects, as the last peaceable admonition; that our attachment to no nation upon earth should supplant our attachment to liberty. This, we flattered ourselves, was the ultimate step of the controversy, but subsequent events have shown how vain was this hope of finding moderation in our enemies.

Several threatening expressions against the colonies were inserted in his majesty's speech; our petition, though we were told it was a decent one, and that his majesty had been pleased to receive it graciously, and to promise laying it before his parliament, was huddled into both houses among a bundle of American papers, and there neglected. The lords and commons in their address, in the month of February, said, that "a rebellion at that time actually existed within the province of Massachusetts Bay, and that those concerned in it had been countenanced and encouraged by unlawful combinations and engagements, entered into by his majesty's subjects in several of the other colonies; and, therefore, they besought his majesty that he would take the most effectual measures to enforce due obedience to the laws and authority of the supreme legislature." Soon after, the commercial intercourse of whole colonies with foreign countries and with each other, was cut off by an act of parliament; by another, several of them were entirely prohibited from the fisheries in the seas near their coasts, on which they always depended for their subsistence, and large reinforcements of ships and troops were immediately sent over to General Gage.

Fruitless were all the entreaties, arguments, and eloquence of an illustrious band of the most distinguished peers and commoners, who nobly and strenuously asserted the justice of our cause, to stay, or even to mitigate the heedless fury with which these accumulated and unexampled outrages were hurried on. Equally fruitless was the interference of the city of London, of Bristol, and many other respectable towns, in our favor. Parliament adopted an insidious manœuvre, calculated to divide us, to establish a perpetual auction of taxations, where colony should bid against colony, all of them uninformed what ransom would redeem their

lives; and thus to extort from us, at the point of the bayonet, the unknown sums that should be sufficient to gratify, if possible to gratify, ministerial rapacity, with the miserable indulgence left to us of raising, in our own mode, the prescribed tribute. What terms more rigid and humiliating could have been dictated by remorseless victors to conquered enemies? In our circumstances to accept them would be to deserve them.

Soon after the intelligence of these proceedings arrived on this continent, General Gage, who, in the course of the last year, had taken possession of the town of Boston, in the province of Massachusetts Bay, and still occupied it as a garrison, on the nineteenth day of April, sent out from that place a large detachment of his army, who made an unprovoked assault on the inhabitants of the said province at the town of Lexington, as appears by the affidavits of a great number of persons, some of whom were officers and soldiers of that detachment, murdered eight of the inhabitants and wounded many others. From thence the troops proceeded, in warlike array, to the town of Concord, where they set upon another party of the inhabitants of the same province, killing several and wounding more, until compelled to retreat by the country people suddenly assembled to repel this cruel aggression. Hostilities, thus commenced by the British troops, have been since prosecuted by them, without regard to faith or reputation. The inhabitants of Boston being confined within that town by the general, their governor, and having, in order to procure their dismissal, entered into a treaty with him; it was stipulated that the said inhabitants having deposited their arms with their own magistrates, should have liberty to depart, taking with them their other effects. They accordingly delivered up their arms, but in open violation of honor, in defiance of the obligation of treaties, which even savage nations esteem sacred, the governor ordered the arms deposited as aforesaid, that they might be preserved for their owners, to be seized by a body of soldiers, detained the greatest part of the inhabitants in the town, and compelled the few who were permitted to retire, to leave their most valuable effects behind.

By this perfidy wives are separated from their husbands, children from their parents, the aged and the sick from their relations and friends, who wish to attend and comfort them, and those who have been used to live in plenty, and even elegance, are reduced to deplorable distress.

The general, further emulating his ministerial masters, by a proclamation bearing date on the twelfth day of June, after venting the grossest falsehoods and calumnies against the good people of these colonies, proceeds to "declare them all, either by name or description, to be rebels and traitors, to supersede the course of common law, and instead thereof to publish and order the use and exercise of the law mar-

tial." His troops have butchered our countrymen, have wantonly burnt Charlestown, besides a considerable number of houses in other places; our ships and vessels are seized; the necessary supplies of provisions are intercepted, and he is exerting his utmost power to spread destruction and devastation around him.

We have received certain intelligence, that General Carleton, the Governor of Canada, is instigating the people of that province and the Indians, to fall upon us; and we have but too much reason to apprehend, that schemes have been formed to excite domestic enemies against us. In brief, a part of these colonies now feel, and all of them are sure of feeling, as far as the vengeance of administration can inflict them, the complicated calamities of fire, sword, and famine. We are reduced to the alternative of choosing an unconditional submission to the tyranny of irritated ministers, or resistance by force. The latter is our choice. **WE HAVE COUNTED THE COST OF THIS CONTEST, AND FIND NOTHING SO DREADFUL AS VOLUNTARY SLAVERY!** Honor, justice and humanity forbid us tamely to surrender that freedom which we received from our gallant ancestors, and which our innocent posterity have a right to receive from us. We cannot endure the infamy and guilt of resigning succeeding generations to that wretchedness which inevitably awaits them, if we basely entail hereditary bondage upon them.

Our cause is just. Our union is perfect. Our internal resources are great, and, if necessary, foreign assistance is undoubtedly attainable. We gratefully acknowledge, as signal instances of Divine favor towards us, that his providence would not permit us to be called into this severe controversy, until we were grown up to our present strength, had been previously exercised in warlike operations, and possessed the means of defending ourselves. With hearts fortified by these animating reflections, we most solemnly, before God and the world, **DECLARE**, that, exerting the utmost energy of those powers, which our beneficent Creator has graciously bestowed upon us, the arms we have been compelled by our enemies to assume, we will, in defiance of every hazard, with unabating firmness and perseverance, employ for the preservation of our liberties; being with one mind resolved to die freemen rather than to live slaves.

Lest this declaration should disquiet the minds of our friends and fellow-subjects in any part of the empire, we assure them that we mean not to dissolve that union which has so long and so happily subsisted between us, and which we sincerely wish to see restored. Necessity has not yet driven us into that desperate measure, or induced us to excite any other nation to war against them. We have not raised armies with ambitious designs of separating from Great Britain, and establishing independent States. We fight not for glory or for conquest. We exhibit to mankind the remarkable

spectacle of a people attacked by unprovoked enemies, without any imputation or even suspicion of offence. They boast of their privileges and civilization, and yet proffer no milder conditions than servitude or death.

In our own native land, in defence of the freedom that is our birth-right, and which we ever enjoyed till the late violation of it—for the protection of our property, acquired solely by the honest industry of our forefathers and ourselves, against violence actually offered, we have taken up arms. We shall lay them down when hostilities shall cease on the part of the aggressors, and all danger of their being renewed shall be removed, and not before.

With an humble confidence in the mercies of the Supreme and impartial Judge and Ruler of the universe, we most devoutly implore his divine goodness to protect us happily through this great conflict, to dispose our adversaries to reconciliation on reasonable terms, and thereby to relieve the empire from the calamities of civil war.\*

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\* About the tenth of July, 1775, the Declaration of Congress was proclaimed at the head of the several regiments.

\* \* \* As soon as those memorable words were pronounced to General Putnam's division, which he had ordered to be paraded on Prospect Hill, they shouted in three huzzas a loud ~~Amens~~! *Dunphy's Life of Putnam.*

## JOHN WITHERSPOON.

DOCTOR WITHERSPOON was lineally descended from the eminent John Knox, of whose prayers, it is recorded, Mary, Queen of Scots, "was more afraid than of an army of ten thousand men." Elizabeth, the daughter of Mr. Knox, married John Welsh, "who strongly resembled his father-in-law in genius, character, and in usefulness in the church;" and in this line the descent of Doctor Witherspoon is traced. His father was a minister settled in the Parish of Yester, a short distance from Edinburgh. There he was born on the fifth day of February, 1722. At a very early age, he was placed in the public school at Haddington, where he soon acquired a high reputation for an assiduous attention to his studies, and for the strength and solidity of his judgment. Just before he reached his fifteenth year, he entered the University of Edinburgh, at which place he remained until the age of twenty-one, giving constant proofs of his intellectual and moral worth. On leaving this institution he was licensed to preach, and soon after was invited to become the colleague of his father, in the church of his native town. This he declined, preferring to accept the pastoral charge of a church at Beith, in Ayrshire, where he was subsequently ordained. In this position, he gained a great reputation as a preacher, and by the diligent and faithful discharge of his parochial duties, deeply established himself in the affections of his people.

During this pastorate of Doctor Witherspoon the Scotch rebellion of 1745 broke out. The country became alarmed at the approach of the rebels, and several parishes raised corps of militia to assist the regular soldiery in subduing them. Among others, the Parish of Beith furnished its quota.\* Doctor Witherspoon, after animating his parishioners in the cause, assembled a company of them, and marched at their head to Glasgow. At this place, he was informed, that, from the confidence reposed in the king's troops, as well as from their numbers, compared with those of the enemy, it would be unnecessary for the militia to go farther; and he received orders to return. But Dr. Witherspoon's enthusiasm was not so easily allayed: he went forward and was present at the battle of Falkirk; on the termination of which, he was taken prisoner, with several other individuals, who had been led to the field by their curiosity alone, and confined in the Castle of Doune. The room occupied by him was situated in the highest part of the castle, and next the battlements. His fellow prisoners were five members of the Edinburgh company of volunteers, and two citizens of Aberdeen, who had been taken in the north country, as spies. In a neighboring cell were eight persons, suffering like himself the effects of injudicious curiosity. It was proposed by one of the Edinburgh volunteers, to make a rope of their blankets, by which

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\* The following is a resolution of the feuars and tenants of one division of the parish of Beith, drawn up by Doctor Witherspoon, and signed by eighteen of his parishioners:

"We, the subscribing farmers and tenants within the barony of Broadstone, in the parish of Beith, doe hereby bind ourselves, each of us for ourselves, effiering to our respective valuations, to furnish seven men to join the other militia, from the said parish, and to march with them to Stirling; for the support of our religion and liberty, and in defence of our only rightful and lawful Sovereign King George, against his enemies engaged in the present rebellion, which militia being to be engaged in the said cause, for the space of thirty days from the day of their marching from Beith, they shall be supported accordingly, agreeably to our different preparations, at the rate of two-pence half-penny sterling, upon every pound Scots of valuation." *Blackwood, vol. 2, page 433.*

they might descend from the battlements, to which they were allowed constant access by the sentinel. This proposition was favored by the rest of the volunteers and the two men of Aberdeen; Dr. Witherspoon suggesting that he would go to the battlements, and if they succeeded, he would probably follow their example. Having finished the rope, they went to the battlements, where they drew lots for the order in which they should proceed, and commenced their descent. Four of them reached the ground in safety, but the fifth, who was larger than the rest, "and, withal, going in a hurry," broke the rope just as he touched the ground. The next one who attempted to descend, was severely injured, and was carried by his comrades on board the sloop-of-war Vulture, then lying in the Frith of Forth.

One of the volunteers and Dr. Witherspoon, were now left on the battlements; the former, believing that the rope was not strong enough, drew it up and carried it to the room where there were other blankets, with which he completed it, adding to its size and length. He then returned to the battlements, fastened the rope, and began to descend, which he did very successfully, until he reached that part of the rope where he had added so much to its thickness, that his hand could not grasp it, and, relinquishing his hold, he fell to the ground so seriously injured, that he died soon after. Doctor Witherspoon declined this hazardous attempt, and remained a prisoner until after the battle of Culloden. One of his "curious" friends was more fortunate. Being a man of diminutive size, "he got himself dressed in woman's attire, walked out of his prison carrying a tea-kettle,"\* and thus escaped.

From Beith, Doctor Witherspoon removed to Paisley, where he continued, in the height of popularity and usefulness, until he was called to the Presidency of New Jersey College. In the summer of 1764, he published a volume of his writings, chiefly sermons. Among the most celebrated of his productions at this period of his life, was a work entitled, *Ecclesiastical Characteristics*, a series of maxims, directed against the moderate men of the Church of Scotland, who allowed in their church discipline a wider latitude of opinion, and "preached in a style that seemed to the people less evangelical, and less affecting to the heart and conscience," than was considered correct by the orthodox portion of the church, of which Doctor Witherspoon was a warm and able supporter. In this production he evinced great powers of satire and humor. In reverting to the general indifference as to the exercises of public worship, he gave full scope to his irony, "and intended," he said, "to have been at some pains in showing the great indecency of a grave and apparently serious carriage, or of introducing any religious subject of conversation into promiscuous company; but when I consider how successfully all visible religion was attacked, both by wits and preachers, immediately after the restoration of King Charles the Second; how constantly any disposition of this sort hath been borne down by all men of taste ever since that time, which is now near a whole century; as also how seldom any religious discourse is to be met with at this day, either among clergy or laity, I shall only rejoice in myself, congratulate my reader, upon the purity of the times, and proceed to the other part of the maxim.

"As to the public exercises of religious worship, although a certain measure of them is reasonable enough, and though the office by which we have our bread obliges us to be often engaged in them; yet a truly moderate man, without renouncing his calling, has it in his power to pare off a great many superfluities with which the orthodox clergy are apt to overload religion and render it unpalatable to the polite world. Being members of church judicatures, and, we hope, the majority in most of them, the moderate party can discourage and stifle all motions for extraordinary fasts or thanksgivings, which experience has taught us serve only to promote idleness and discourage industry. Upon the day that Henry the Fifth fought at Agincourt, a solemn fast was kept in England for his success; and some historians are pleased to say, that the prayers of the nation had some share in procuring the victory; but later histories have disproved this; and now it can be demonstrated upon paper, that a fast day in Scotland loses fifty thousand pounds to the nation, while nobody can make any calculation what it wins. For this reason, I was very refreshing to hear, as we did lately, that even in the most distant and

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\* *Homes Works: History of Rebellion, 1745: Sanderson's Lives of the Signers: Blackwood, vol. 2, page 433.*

northerly corners of this country, there is a set of clergy of an heroic spirit, who are resolved to reform their people, and beat them out of that unpolite and barbarous inclination, which many of them still retain, of hearing sermons.

"With a view to the same good end, we can curtail our business at home, both as to the number and length of our pulpit performances. In our own families, though it would not perhaps yet be convenient to imitate the *beau monde* so very quickly, in discarding the worship of God altogether; yet we may by degrees sometimes omit it, through hurry of business, at other times by dropping, now and then, at least, some parts of it; and in gentlemen's families, take care to give discreet intimations that we do not incline to put them out of their ordinary way, or occasion the least interruption to the mirth of the company. Sometimes, indeed, it may happen, by a concurrence of circumstances, that one of us may, at bed time, be unequally yoked with an orthodox brother, who may propose a little unseasonable devotion between ourselves, before we lie down to sleep: but there are twenty ways of throwing cold water upon such a motion; or, if it should be insisted upon, I would recommend a moderate way of complying with it, from the example of one of our friends, who, on a like occasion, yielded so far, that he stood up at the back of a chair, and said, 'Oh Lord, we thank thee for Mr. Bayle's Dictionary. Amen.' This was so far from spoiling good company, that it contributed wonderfully to promote social mirth, and sweetened the young men in a most agreeable manner for their rest. Whatever is forced is unnatural, and ought to be avoided; and therefore, what the Puritan said of square caps, we may apply to many modes of devotion: 'That he would not wear them because his head was round.'"<sup>\*</sup>

The *Characteristics* added extensively to the reputation of Doctor Witherspoon. Doctor Warburton, the celebrated Bishop of Gloucester, says Rodgers, mentions them with particular approbation, and expressed his wish that the English Church had a similar corrector. He published a companion to this work, under the title of *A Serious Apology for the Ecclesiastical Characteristics, by the Real Author of that Performance*; in which he defended the style of the former work. Another similar work was his *History of a Corporation of Servants, discovered a few years ago in the Interior Parts of South America, containing some very surprising events and extraordinary characters*. He also wrote earnestly against theatrical exhibitions, and attempted to show that contributing to the support of public theatres was inconsistent with the character of a Christian.

On the nineteenth of November, 1766, shortly after the death of Doctor Finlay, the trustees of New Jersey College elected Doctor Witherspoon president of that institution, and sent a letter to Richard Stockton,† who was then in London, requesting him to visit Paisley, and personally solicit a compliance with the wishes of the trustees. After some hesitation, on account of the reluctance of his wife to leave her native country and the "sepulchres of her ancestors," he sailed for America, where he arrived in August, 1768. On the seventeenth of the same month he was inaugurated at Princeton, and at once entered upon the duties of his office. His influence was soon felt in the financial and literary affairs of the college; "his reputation excited a generous liberality in the public, and his personal exertions, extending from Massachusetts to Virginia, soon raised its funds to a flourishing state." In this position he remained until the commencement of the Revolution, when the college was dispersed.

He was a member of the New Jersey convention for the formation of the constitution of that State, and on the twenty-first of June, 1776, was elected to the Continental Congress, in which assembly he took his seat a few days prior to the Declaration of Independence. His course in this position was bold, decisive, and patriotic. He became an American on his landing in America.‡ When a distinguished member of Congress said that the Colonies were "not yet ripe for a declaration of independence," he replied, "In my judgment, sir, we are not only ripe,

<sup>\*</sup> *Ecclesiastical Characteristics*; or, the *Arcana of Church Policy*. Being an Humble Attempt to open the Mystery of Moderation. Wherein is shown a plain and easy way of attaining to the character of a Moderate Man, as at present in repute in the Church of Scotland.—*Witherspoon's Works*, vol. 3, page 136.

† *New Jersey Historical Collections*, vol. 3, page 200.

‡ *Rodgers's Discourse*, page 32.

but rotting." An account of his notice of Governor Franklin, when he was brought before Congress, under a military guard, is thus given by Doctor Green: \* "The governor treated the whole Congress with marked indignity, refused to answer any questions that were put to him, represented it as a lawless assembly, composed of ignorant and vulgar men, utterly incapable of devising any thing for the public good, and who had rashly subjected themselves to the charge and deserved punishment of rebellion. When he had finished his tirade of abuse, Doctor Witherspoon rose and let loose upon him a copious stream of that irony and sarcasm which he always had at command; and in which he did not hesitate to allude to the governor's illegitimate origin, and to his entire want, in his early training, of all scientific and liberal knowledge. At length he concluded, nearly, if not exactly, in these words: 'On the whole, Mr. President, I think that Governor Franklin has made us a speech every way worthy of his exalted birth and refined education.'"

He continued in Congress until the fall of 1782, using his greatest exertions for the success of the cause of his adopted country. He opposed the election of Thomas Paine as Secretary to the Committee of Foreign Affairs, as he thought of him as a person "ignorant of human nature, as well as an enemy to the Christian faith."† His speeches upon several important topics, during his congressional career, are included in this work, and are among the few that now remain of that Congress.

It is well known that he wrote the addresses of Congress recommending fasts; and during the month previous to his election to that body, he delivered, at Princeton, a sermon entitled the *Dominion of Providence over the Passions of Men*, on the general Fast Day appointed throughout the Colonies; which was published, with the addition of *An Address to the Natives of Scotland residing in America*. He was also the author of *Thoughts on American Liberty*, and several other political essays, serious, humorous, and satirical. After his death, which occurred on the fifteenth of November, 1795, his works were collected and published, together with a sketch of his life, contained in a funeral sermon preached by the Rev. Dr. John Rodgers of New York.

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#### THE CONFERENCE WITH LORD HOWE.

A few days after the battle of Long Island, General Sullivan, who was taken prisoner in that action, was permitted to return to Philadelphia, with the view of communicating with Congress relative to a conference he had held with the British Admiral, Lord Howe, in reference to an adjustment of the difficulties between Great Britain and the colonies. On the second of September he arrived at the Congress, and "being admitted, delivered a verbal message he had in charge from Lord Howe, which he was desired to reduce to writing." The next day he presented a written message,‡ upon

which Doctor Witherspoon delivered the following speech:

MR. PRESIDENT:—The subject we are now upon is felt and confessed by us all, to be of the utmost consequence, and perhaps I may also

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with some of the members, whom he would consider, for the present, only as private gentlemen, and meet them himself as such, at such place as they should appoint.

"That he, in conjunction with General Howe, had full powers to compromise the dispute between Great Britain and America, upon terms advantageous to both; the obtaining of which delayed him near two months in England, and prevented his arrival at this place before the Declaration of Independence took place.

"That he wished a compact might be settled at this time, when no decisive blow was struck, and neither party could say that they were compelled to enter into such agreement.

"That, in case Congress were disposed to treat, many things which they had not as yet asked, might and ought to be granted them; and that if, upon the conference, they found any probable ground of accommodation, the authority of Congress must be afterwards acknowledged, otherwise the compact would not be complete." *Journal of Congress*, 1776.

\* Life of Ashbel Green, V. D. M., begun to be written by himself in his eighty-second year, and continued till his eighty-fourth. Prepared for the press, at the author's request, by Joseph H. Jones; page 61.

† See note in Witherspoon's Works, vol. 2, page 414.

‡ The following is the purport of the message from Lord Howe to Congress, by General Sullivan:

"That though he could not at present treat with Congress, as such, yet he was very desirous of having a conference

say, of delicacy and difficulty. I have not been accustomed, in such cases, to make solemn professions of impartiality, and shall not do it now, because I will not suppose that there are any suspicions to the contrary in the minds of those who hear me. Besides, the variety of opinions that have been formed and delivered upon it, seem to prove that we are giving our own proper judgment, without prejudice or influence, which, I hope, will lead to the discovery of what is most wise and expedient upon the whole.

As the deliberation arises from a message sent to us by Lord Howe, at least by his permission, I think it is of importance to attend, with greater exactness, to all the circumstances of that message, than has been done by any gentleman who has yet spoken on the subject. It comes from the commander-in-chief of the forces of the king of Great Britain, and one who is said to carry a commission to give peace to America.

From the conduct of the ministry at home, from the acts of Parliament, and from Lord Howe's proclamation, in conformity to both, it is plain that absolute, unconditional submission is what they require us to agree to, or mean to force us to. And from the most authentic private intelligence, the king has not laid aside his personal rancor; it is rather increasing every day. In these circumstances Lord Howe has evidently a great desire to engage us in a treaty, and yet he has constantly avoided giving up the least punctilio on his side. He could never be induced to give General Washington his title.\* He plainly tells us he cannot treat with Congress, as such, but he has allowed

a prisoner of war to come and tell us he would be glad to see us as private gentlemen.

It has been said that this is no insult or disgrace to the Congress; that the point of honor is hard to be got over in making the first advances. This, sir, is mistaking the matter wholly. He has got over this point of honor; he has made the first overtures; he has told General Washington, by Colonel Putnam, that he wished that message to be considered as making the first step. His renewed attempts by Lord Drummond, and now by General Sullivan, point out to all the world that he has made the first step. It will doubtless be related at home, and I am of opinion it is already written, and boasted of to the ministry at home, that he has taken such a part. Therefore, any evil or condescension that can attend seeking peace first, has been submitted to by him. Yet has he uniformly avoided any circumstance that can imply that we are any thing else but subjects of the king of Great Britain, in rebellion. Such a message as this, if in any degree intended as respectful to us, ought to have been secret; yet has it been open as the day. In short, such a message was unnecessary, for if he meant only to communicate his mind to the Congress, by private gentlemen, he might have done that many ways, and it needed not to have been known, either to the public or the Congress, till these private gentlemen came here on purpose to reveal it. These then are the circumstances which attend this message as it is now before us, and the question is, shall we comply with it in any degree, or not? Let us ask what benefit shall be derived from it? There is none yet shown to be possible. It has been admitted by every person, without exception, who has spoken, that we are not to admit a thought of giving up the independence we have so lately declared, and by the greatest part, if not the whole, that there is not the least reason to expect that any correspondence we can have with him will tend to peace. Yet I think in the beginning of the debate, such reasonings were used, as seemed to me, only to conclude that we should grasp at it as a means of peace. We were told that it was easy for us to boast or be valiant here, but that our armies were running away before their enemies. I never loved boasting, neither here nor any where else. I look upon it as almost a certain forerunner of disgrace. I found my hope of success in this cause, not in the valor of Americans, or the cowardice of Britons, but upon the justice of the cause, and still more upon the nature of things. Britain has first injured and inflamed America to the highest degree, and now attempts, at the distance of three thousand miles, to carry on war with this whole country, and force it to absolute submission. If we take the whole events of the war since it commenced, we shall rather wonder at the uniformity of our success, than be surprised at some cross events. We have seen bravery as well as cowardice in this country, and there are no consequences of

\* The following extracts will explain this remark of Doctor Witherspoon:—"Yesterday Lord Howe sent up a flag with the captain and lieutenant of the *Eagle*, man-of-war. The adjutant general met them after some little ceremony, but as their letter was directed for *George Washington, esq.*, he would not receive it. The officers insisted much on his receiving it, saying it was of a civil nature, his lordship being invested with unlimited power, and was sorry that he had not arrived a few days sooner." *Letter from New York, dated July 15th, published in the Pennsylvania Journal of July 17, 1776.*

In the same journal of July 24th, is the following extract of a letter from New York, dated July 22d, 1776. Saturday came up from Lord Howe, a flag of truce, Adjutant General Patterson, of the British army. He landed near our battery and passed through the life guards of General Washington, and had a private conference with him, at Colonel Knox's, for near half an hour, the particulars of which I am this moment informed of by a person of distinction. One piece of this business was, that he urged the general to accept of the letter, and that Lord Howe was extremely sorry it could not be received, as it was of a private nature. General Washington told the adjutant, as for himself he did not mind the title, but the general officers did not think proper for him to receive it without, and that he could not on any account receive it. The adjutant behaved with great politeness, and made use of the forms necessary to a person in the general's situation, as "May it please your Excellency," &c., &c.



either that are probable, that can be worth mentioning, as ascertaining the event of the contest.

Lord Howe speaks of a decisive blow not being yet struck, as if this cause depended upon one battle which could not be avoided. Sir, this is a prodigious mistake. We may fight no battle at all for a long time, or we may lose some battles, as was the case with the British themselves in the Scotch rebellion of 1745, and the cause, notwithstanding, be the same. I wish it were considered, that neither loss nor disgrace worth mentioning, has befallen us in the late engagement, nor comparable to what the British troops have often suffered. At the battle of Preston, sir, they broke to pieces and ran away like sheep, before a few Highlanders. I myself saw them do the same thing at Falkirk, with very little difference, a small part only of the army making a stand, and in a few hours the whole retreating with precipitation before their enemies. Did that make any difference in the cause? Not in the least—so long as the body of the nation were determined, on principle, against the rebels. Nor would it have made any other difference, but in time, though they had got possession of London, which they might have easily done, if they had understood their business, for the militia in England, there gathered together, behaved fifty times worse than that of America has done lately. They generally disbanded and ran off wholly, as soon as the rebels came within ten or twenty miles of them. In short, sir, from any thing that has happened, I see not the least reason for our attending to this delusive message. On the contrary, I think it is the very worst time that could be chosen for us, as it will be looked upon as the effect of fear, and diffuse the same spirit, in some degree, through different ranks of men.

The improbability of any thing arising from this conference, leading to a just and honorable peace, might be shown by arguments too numerous to be even so much as named. But what I shall only mention is, that we are absolutely certain, from every circumstance, from all the proceedings at home, and Lord Howe's own explicit declaration in his letter to Doctor Franklin, that he never will acknowledge the independence of the American States.

I observed that one or two members said, in objection to the report of the board of war, that it was like a begging of the question, and making a preliminary of the whole subject in debate. Alas, sir, this is a prodigious mistake! It was not only not the whole, but it was properly no subject of debate at all, till within these three months. We were contending for the restoration of certain privileges under the Government of Great Britain, and we were praying for reunion with her. But in the beginning of July, with the universal approbation of all the States now united, we renounced this connection, and declared ourselves free and independent. Shall we bring this into

question again? Is it not a preliminary? Has it not been declared a preliminary by many gentlemen, who have yet given their opinion for a conference, while they have said they were determined on no account, and on no condition, to give up our independence? It is then a necessary preliminary—and it is quite a different thing from any punctilios of ceremony. If France and England were at war, and they were both desirous of peace, there might be some little difficulty as to who should make the first proposals; but if one of them should claim the other as they did long ago as a vassal or dependent subject, and should signify a desire to converse with the other, or some one deputed by him, and propose him many privileges, so as to make him even better than before, I desire to know how such a proposal would be received? If we had been for ages an independent republic, we should feel this argument with all its force. That we do not feel it, shows that we have not yet acquired the whole ideas and habits of independence; from which I only infer, that every step taken in a correspondence as now proposed, will be a virtual or partial renunciation of that dignity so lately acquired.

I beg you would observe, sir, that Lord Howe himself, was fully sensible that the declaration of independence precluded any treaty, in the character in which he appeared; as he is said to have lamented that he had not arrived ten days sooner, before that declaration was made. Hence it appears, that, entering into any correspondence with him, in the manner now proposed, is actually giving up, or subjecting to a new consideration, the independence which we have declared. If I may be allowed to say it without offence, it seems to me that some members have unawares admitted this, though they are not sensible of it; for when they say, that it is refusing to treat, unless the whole be granted, they must mean, that some part of the whole must be left to be discussed and obtained, or yielded by the treaty.

But, sir, many members of this House have either yielded, or at least supposed, that no desirable peace, or no real good, could be finally expected from this correspondence, which is wished to be set on foot; but they have considered it as necessary in the eye of the public, to satisfy them, that we are always ready to hear any thing that will restore peace to the country. In this view, it is considered as a sort of trial of skill between Lord Howe and us, in the political art. As I do truly believe, that many members of this House are determined by this circumstance, I shall consider it with some attention. With this view, it will be necessary to distinguish the public in America, into three great classes. 1. The tories, our secret enemies. 2. The whigs, the friends of independence, our sincere and hearty supporters. 3. The army, who must fight for us.

As to the first of them, I readily admit that they are earnest for our treating. They are

exulting in the prospect of it; they are spreading innumerable lies to forward it. They are treating the whigs already with insult and insolence upon it. It has brought them from their lurking holes; they have taken liberty to say things in consequence of it, which they durst not have said before. In one word, if we set this negotiation on foot, it will give new force and vigor to all their seditious machinations. But, sir, shall their devices have any influence upon us at all? If they have at all, it should be to make us suspect that side of the question which they embrace. In cases where the expediency of a measure is doubtful, if I had an opportunity of knowing what my enemies wished me to do, I would not be easily induced to follow their advice.

As to the whigs and friends of independence I am well persuaded that multitudes of them are already clear in their minds, that the conference should be utterly rejected; and to those who are in doubt about its nature, nothing more will be requisite than a clear and full information of the state of the case, which I hope will be granted them.

As to the army, I cannot help being of opinion, that nothing will more effectually deaden the operations of war, than what is proposed. We do not ourselves expect any benefit from it, but they will. And they will possibly impute our conduct to fear and jealousy as to the issue of the cause, which will add to their present little discouragement, and produce a timorous and despondent spirit.\*

#### SPEECH ON THE CONFEDERATION.

On the eleventh of June, 1776, Congress resolved, "that a committee be appointed to prepare and digest the form of a Confederation to be entered into between these Colonies." The next day they voted that the committee should consist of a member from each colony, and proceeded to an election.\* On the twelfth of July, the committee reported a draught consisting of twenty articles, and the twenty-second Congress, in a committee of the whole, took the report into consideration, and continued it in debate until the twentieth of August, when, in an amended form, it was reported back to the House. On the eighth of April, 1777, it was again taken up and debated until the fifteenth of November, at which time it was adopted, the number of the articles having been reduced to thirteen.—The following is part of a speech† delivered by Doctor Witherspoon, during the debates:

The absolute necessity of union, to the vigor and success of those measures on which we are already entered, is felt and confessed by every one of us without exception; so far indeed that those who have expressed their fears or suspicions of the existing confederacy proving

abortive, have yet agreed in saying that there must and shall be a confederacy for the purposes of and till the finishing of this war. So far is well; and so far it is pleasing to hear them express their sentiments. But I entreat gentlemen calmly to consider how far the giving up all hopes of a lasting confederacy among

\* This speech is taken from the fourth volume of Witherspoon's works:

On the fifth of September, 1776, the Report of the Board of War, being under consideration, the Congress

*Resolved*, That General Sullivan be requested to inform Lord Howe, that this Congress, being the representatives of the free and independent States of America, cannot, with propriety, send any of its members to confer with his Lordship in their private characters, but, that, ever desirous of establishing peace on reasonable terms, they will send a committee of their body to know whether he has any authority to treat with persons authorized by Congress for that purpose, in behalf of America, and what that authority is, and to hear such propositions as he shall think fit to make respecting the same.

That the President be desired to write to General Washington, and acquaint him that it is the opinion of Congress, no proposals for making peace between Great Britain and the United States of America, ought to be received or attended to, unless the same be made in writing, and addressed to the representatives of the said States in Congress, or persons authorized by them: and if application be made to him by any of the commanders of the British forces on that subject, that he inform them that these United States, who entered into the war only for the defence of their lives and liberties, will cheerfully agree to peace on reasonable terms, whenever such shall be proposed to them in manner aforesaid."

These resolutions were delivered to General Sullivan with orders to return immediately to Lord Howe, and on the sixth of September, Doctor Franklin, John Adams, and Edward Rutledge, were elected to confer with the British Admiral. They had an interview, but the result only convinced both parties that a reconciliation could not be perfected on such terms as the British were inclined to offer.

\* The members of the committee were Josiah Bartlett, Samuel Adams, Stephen Hopkins, Roger Sherman, R. R. Livingston, John Dickinson, Thomas McKean, Thomas Stone, Thomas Nelson, Joseph Hewes, Edward Rutledge, and Button Gwinnett. On the twenty-eighth of June, Francis Hopkinson was added to the committee. *Journals of Congress*, 1776-1777.

† See Witherspoon's Works, vol. 4, page 258—also Life and Works of John Adams, vol. 2, page 496.

these States, for their future security and improvement, will have an effect upon the stability and efficacy of even the temporary confederacy, which all acknowledge to be necessary? I am fully persuaded, that when it ceases to be generally known, that the delegates of the provinces consider a lasting union as impracticable, it will greatly derange the minds of the people, and weaken their hands in defence of their country, which they have now undertaken with so much alacrity and spirit. I confess it would to me greatly diminish the glory and importance of the struggle, whether considered as for the rights of mankind in general, or for the prosperity and happiness of this continent in future times.

It would quite depreciate the object of hope, as well as place it at a greater distance. For what would it signify to risk our possessions, and shed our blood to set ourselves free from the encroachments and oppression of Great Britain, with a certainty, as soon as peace was settled with them, of a more lasting war, a more unnatural, more bloody, and much more hopeless war among the colonies themselves? Some of us consider ourselves as acting for posterity at present, having little expectation of living to see all things fully settled, and the good consequences of liberty taking effect. But how much more uncertain the hope of seeing the internal contests of the colonies settled upon a lasting and equitable footing.

One of the greatest dangers I have always considered the colonies as exposed to at present, is treachery among themselves, augmented by bribery and corruption from our enemies. But what force would be added to the arguments of seducers, if they could say with truth, that it was of no consequence whether we succeeded against Great Britain or not, for we must in the end be subjected, the greatest part of us, to the power of one or more, of the strongest or largest of the American States? And here I would apply the argument which we have so often used against Great Britain—that in all history we see that the slaves of freemen, and the subject States of republics, have been, of all others, the most grievously oppressed. I do not think the records of time can produce an instance of slaves treated with so much barbarity, as the Helotes by the Lacedæmonians, who were the most illustrious champions for liberty in all Greece; or of provinces more plundered and spoiled than the States conquered by the Romans, for one hundred years before Cæsar's dictatorship. The reason is plain, there are many great men in free States. There were many consular gentlemen in that great republic, who all considered themselves as greater than kings, and must have kingly fortunes, which they had no other way of acquiring but by governments of provinces, which lasted generally but one year, and seldom more than two.

In what I have already said, or may say, or any cases I may state, I hope every gentleman will do me the justice to believe that I have not

the most distant view to particular persons or societies, and mean only to reason from the usual course of things, and the prejudices inseparable from men as such. And can we help saying that there will be a much greater degree, not only of the corruption of particular persons, but the defection of particular provinces from the present confederacy, if they consider our success itself as only a prelude to contests of a more dreadful nature, and indeed much more properly a civil war, than that which now often obtains the name? Must not small colonies, in particular, be in danger of saying, we must secure ourselves? If the colonies are independent States, separate and disunited, after this war, we may be sure of coming off by the worse. We are in no condition to contend with several of them. Our trade in general, and our trade with them, must be upon such terms as they shall be pleased to prescribe. What will be the consequence of this? Will they not be ready to prefer putting themselves under the protection of Great Britain, France, or Holland, rather than submit to the tyranny of their neighbors, who were lately their equals? Nor would it be at all impossible that they should enter into such rash engagements, as would prove their own destruction, from a mixture of apprehended necessity and real resentment.

Perhaps it may be thought that breaking off this confederacy, and leaving it unfinished after we have entered upon it, will be only postponing the duty to some future period? Alas! nothing can exceed the absurdity of that supposition. Does not all history cry out, that a common danger is the great and only effectual means of settling difficulties, and composing differences? Have we not experienced its efficacy in producing such a degree of union through these colonies, as nobody would have prophesied, and hardly any would have expected?

If, therefore, at present, when the danger is yet imminent, when it is so far from being over, that it is but coming to its height, we shall find it impossible to agree upon the terms of this confederacy, what madness is it to suppose that there ever will be a time, or that circumstances will so change as to make it even probable that it will be done at an after season? Will not the very same difficulties that are in our way, be in the way of those who shall come after us? Is it possible that they should be ignorant of them, or inattentive to them? Will they not have the same jealousies of each other, the same attachment to local prejudices, and particular interest? So certain is this, that I look upon it, as on the repentance of a sinner, Every day's delay, though it adds to the necessity, yet augments the difficulty and takes from the inclination.

There is one thing that has been thrown out, by which some seem to persuade themselves of, and others to be more indifferent, about the success of a confederacy, that from the nature

of men, it is to be expected that a time must come when it will be dissolved and broken in pieces. I am none of those, who either deny or conceal the depravity of human nature, till it is purified by the light of truth, and renewed by the Spirit of the living God. Yet, I apprehend there is no force in that reasoning at all. Shall we establish nothing good because we know it cannot be eternal? Shall we live without government, because every constitution has its old age and its period? Because we know that we shall die, shall we take no pains to preserve or lengthen out life? Far from it, sir: it only requires the more watchful attention to settle government upon the best principles and in the wisest manner, that it may last as long as the nature of things will admit.

But I beg leave to say something more, though with some risk that it will be thought visionary and romantic. I do expect, Mr. President, a progress, as in every other human art, so in the order and perfection of human society, greater than we have yet seen, and why should we be wanting to ourselves in urging it forward? It is certain, I think, that human science and religion have kept company together and greatly assisted each other's progress in the world. I do not say that intellectual and moral qualities are in the same proportion in particular persons, but they have a great and friendly influence upon one another, in societies and larger bodies.

There have been great improvements, not only in human knowledge, but in human nature, the progress of which can be easily traced in history. Every body is able to look back to

the time, in Europe, when the liberal sentiments that now prevail upon the rights of conscience, would have been looked upon as absurd. It is but little above two hundred years since that enlarged system, called the balance of power, took place, and I maintain that it is a greater step, from the former disunited and hostile situation of kingdoms and States, to their present condition, than it would be from their present condition to a state of more perfect and lasting union. It is not impossible, that in future times all the States in one quarter of the globe may see it proper, by some plan of union, to perpetuate security and peace, and sure I am, a well planned confederacy among the States of America may hand down the blessings of peace and public order to many generations. The union of the seven provinces of the low countries has never yet been broken, and they are of very different degrees of strength and wealth. Neither have the cantons of Switzerland ever broken among themselves, though there are some of them Protestants, and some of them Papists, by public establishment. Not only so, but these confederacies are seldom engaged in a war with other nations. Wars are generally between monarchs, or single States that are large. A confederation, of itself, keeps war at a distance from the bodies of which it is composed.

For all these reasons, sir, I humbly apprehend that every argument from honor, interest, safety, and necessity, conspire in pressing us to a confederacy, and if it be seriously attempted, I hope, by the blessing of God upon our endeavors, it will be happily accomplished.

#### THE CONVENTION WITH BURGOWNE.

General Burgoyne surrendered to General Gates, on the seventeenth of October, 1777. The articles of convention not being complied with by the British general, Congress took into consideration a series of resolutions, suspending the embarkation of the British troops, until a distinct and explicit ratification of the convention should be properly notified by the Court of Great Britain to Congress. On these resolutions the following speech was made:

MR. PRESIDENT: I am sensible as every other gentleman in this House seems to be, of the great importance of the present question. It is of much moment, as to private persons, so to every incorporated society, to preserve its faith and honor in solemn contracts: and it is especially so to us, as representing the United States of America, associated so lately and just beginning to appear upon the public stage. I

hope, therefore, we shall detest the thoughts of embracing any measure which shall but appear to be mean, captious, or insidious, whatever advantage may seem to arise from it. On the other hand, as the interest of this continent is committed to our care, it is our duty, and it will be expected of us, that we give the utmost attention that the public suffer no injury by deception, or abuse and insult, on the part of our enemies.

On the first of these principles it is clearly my opinion that we ought, agreeably to the spirit of the first resolution reported, to find, that the convention is not so broken, on the part of General Burgoyne, as to entitle us to refuse compliance with it on ours, and detain him and his army as prisoners of war. I admit that there is something very suspicious in the circumstance of the colors, when compared with his letter in the London Gazette, which makes mention of the British colors being seen flying upon the fort. I agree, at the same time,

that the pretence of the cartouch-boxes not being mentioned in the convention, is plainly an evasion. They ought, in fair construction, to be comprehended under more expressions of that capitulation, than one—arms, ammunition—warlike stores. They were so understood at the capitulation of St. John's. In this present instance many of them were delivered up, which certainly ought to have been the case with all or none. And once more, I admit that the detention of the bayonets in the instances in which it was done, was undeniably unjust.\*

As to the first of these particulars, I am unwilling to distrust the honor of a gentleman solemnly given; and therefore, as General Burgoyne has given his honor to General Gates, that the colors were left in Canada, I suppose it is substantially true, whatever small exception there might be to it. The colors seen flying at Ticonderoga, were perhaps old colors occasionally found there, or perhaps taken from some of the vessels lying at that place, and left there when the army proceeded further up the country. This is the rather probable, that if the regiments in general had had colors, they must have been seen very frequently by our army in the battles, or upon the march.

As to the other circumstances, they are so mean and little in their nature, that I suppose them to have arisen from the indiscretion of individuals, quite unknown to the commander-in-chief, or even to the officers in general.

We ought also to consider, that it was so unexpected, and must have been so humiliating a thing, for a whole British army to surrender their arms, and deliver themselves up prisoners to those of whom they had been accustomed to speak with such contempt and disdain—that it is not to be wondered at, if the common soldiers did some things out of spite and ill humor, not to be justified. To all these considerations I will only add, that though the want of the colors deprives us of some ensigns of triumph which it would have been very grateful to the different States to have distributed among them, and to have preserved as monuments of our victory, the other things are so trifling and unessential, that it would probably be considered as taking an undue advantage, if we should retain the whole army here on that account. I would, therefore, sir, have it clearly asserted, that though we are not insensible of those irregularities, and they may contribute to make us attentive to what shall hereafter pass before

the embarkation, we do not consider them as such breaches of the convention, as will authorize us in justice to declare it void.

On the other hand, sir, it is our indispensable duty to use the greatest vigilance and to act with the greatest firmness, in seeing that justice be done to the American States. Not only caution, but what I may call jealousy and suspicion, is neither unreasonable nor indecent in such a case. This will be justified by the knowledge of mankind. History affords us many examples of evasive and artful conduct in some of the greatest men and most respectable nations, when hard pressed by their necessities, or when a great advantage was in view. The behavior of the Romans when their army was taken at the Caudine Forks, may be produced as one. The conduct of the Samnites was not over-wise; but that of the Romans was dishonorable to the last degree, though there are civilians who defend it. Their consul, after his army had passed through the yoke, a symbol at that time of the utmost infamy, made a peace with the Samnites. The Senate refused to ratify it, but kept up a show of regard to the faith plighted, by delivering up the consul to the Samnites, to be used as they thought proper. That people answered as was easily suggested by plain common sense, that it was no reparation at all to them to torment or put one man to death; but that if they disavowed the treaty, they ought to send back the army to the same spot of ground in which they had been surrounded. No such thing however was done. But the Romans, notwithstanding, immediately broke the league; and with the same army, which had been let go, or a great part of it, brought the unhappy Samnites to destruction. Such instances may be brought from modern as well as ancient times. It is even the opinion of many persons of the best judgment, that the convention entered into by the late Duke of Cumberland was by no means strictly observed by the Court of London.

When I consider this, sir, I confess I look upon the expression in General Burgoyne's letter to General Gates, of November fourteenth, as of the most alarming nature. For no other and better reason, even so much as pretended, than that his quarters were not so commodious as he expected, he declares the public faith is broke and we are the immediate sufferers.\* In this he expressly declares and subscribes his

\* In the return of the ordnance and stores taken from General Burgoyne, no mention was made of standards, military chest, medicines, or tents. The muskets amounted only to 4647, a number not equal to the prisoners who surrendered agreeably to the convention, and all those muskets were returned unfit for service; there were only 638 cartouch boxes, and the number of bayonets was greatly inferior to the muskets, and these as well as the entlasses, were returned "without scabbards" or belts.—*Journals of Congress*, 1777.

\* In this letter General Burgoyne complained that his troops had not been furnished with such quarters as they had a right to expect, and continued: "While I state to you, sir, this very unexpected treatment, I entirely acquit Major General Heath, and every gentleman of the military department, of any inattention to the public faith engaged in the Convention. They do what they can, but while the supreme powers of the State are unable or unwilling to enforce their authority, and the inhabitants want the hospitality, or indeed the common civilization to assist us without it, the public faith is broke and we are the immediate sufferers." *Heath's Memoirs*, page 145.

opinion, that the Convention is broken on our part, and in the last expression, *we are the immediate sufferers*, every person must perceive a menacing intimation of who shall be the sufferers when he shall have it in his power.

Being sufficiently settled as to the principle on which I shall found my opinion, it is unnecessary for me to give an account of the law of nature and nations, or to heap up citations from the numerous writers on that subject. But that what I shall say may have the greater force, I beg it may be observed that the law of nature and nations is nothing else but the law of general reason, or those obligations of duty from reason and conscience on one individual to another, antecedent to any particular law derived from the social compact, or even actual consent. On this account it is called the law of nature, and because there are very rarely to be found any parties in such a free State, with regard to each other, except independent nations, therefore, it is also called the law of nations. One nation to another is just as man to man in a state of nature. Keeping this in view, a person of integrity will pass as sound a judgment on subjects of this kind, by consulting his own heart, as by turning over books and systems. The chief use of books and systems is to apply the principle to particular cases and suppositions, differently classed, and to point out the practice of nations in several minute and special particulars, which, unless ascertained by practice, would be very uncertain and ambiguous.

But, sir, I must beg your attention, and that of the House, to the nature of the case before us—at least, as I think it ought to be stated. I am afraid that some members may be misled by considering this declaration of General Burgoyne as an irregularity of the same species, if I may speak so, with the other indiscretions, or even frauds, if you please to call them so, of withholding the cartouch boxes, or hiding or stealing the bayonets. The question is not, whether this or the other thing done by the army is a breach of the Convention. I have, for my part, given up all these particulars, and declared my willingness to ratify the Convention after I have heard them, and believe them to be true. But we have here the declared opinion of one of the parties, that the public faith is broken by the other. Now, the simplest man in the world knows, that a mutual onerous contract is always conditional, and that if the condition fails on one side, whether from necessity or fraud, the other is free. Therefore, we have reason to conclude, that if Mr. Burgoyne is of opinion that the Convention is broken on our part, he will not hold to it on his. He would act the part of a fool if he did. It is of no consequence to say his opinion is ill-founded or unjust, as it manifestly is in the present case, for whether it is just or unjust, if it is really his opinion, (and we should wrong his sincerity to doubt it,) the consequences are the same with respect to us. Men do often,

perhaps generally, adhere with greater obstinacy to opinions that are ill, than those that are well founded, and avenge imaginary or trifling injuries with greater violence, than those that are real or great. Nay, we may draw an argument for our danger from the very injustice of his complaint. If he has conceived the Convention to be broken on so frivolous a pretence as that his lodging is not quite commodious, after the just caution inserted by General Gates in the preliminary articles, what have we to expect from him as soon as he shall recover his liberty and the power of doing mischief? It shows a disposition to find fault and an impatience under his present confinement, the future effects of which we have the greatest reason to dread.

The more I consider this matter, sir, the more it strikes me with its force. General Gates says, upon the subject of accommodation, *granted as far as circumstances will admit*. Was not this proper and necessary? It was very natural to suppose that General Burgoyne, accustomed to the splendor of the British court, and possessed with ideas of his own importance, would be but ill pleased with the best accommodations that could be obtained for him, and his numerous followers, in one of the frugal States of New England. It was also in the neighborhood of a place not expecting, in the least, the honor of such guests, which had been long the seat of war—which had been exhausted by our army and plundered by theirs. One would have thought that the recollection of the ruin of Charlestown, the burning of which, if I mistake not, in a letter of his from Boston to England, he calls a glorious light, might have prevented his complaints, even though he had less elbow room than he wished for. But as circumstances stand, by what conduct shall we be able to satisfy him? When will pretences ever be wanting to one seeking to prove the Convention broken, when it is his inclination or his interest to do so?

It has been said, sir, that we ought not to take this declaration of his in so serious a manner, that it was written rashly and in the heat of passion, and that he did not mean that we should dread such consequences from it. All this I believe to be strictly true. It probably fell from him in passion, and very unadvisedly. But is he the first person that has rashly betrayed his own mischievous designs? Or is this a reason for our not availing ourselves of the happy discovery? His folly in this instance is our good fortune. He is a man, sir, whom I never saw, though I have been more than once in England; but if I should say I did not know him, after having read his lofty and sonorous proclamation and some other productions, I should say what was not true. He is evidently a man, showy, vain, impetuous, and rash. It is reported of General Gates, from whom I never heard that any other words of boasting or ostentation fell, that he said he knew Burgoyne, and that he could build a wall for him to run his head

against. I do not by any means approve of boasting in general. I think a man should not boast of what he has done, much less of what he only means to do; yet I cannot help saying that this was a most accurate prediction, which, with the event that followed it, plainly points

out to us the character of General Burgoyne. Do you think that such a man would not take the advantage of this pretended breach of the Convention on our part, and endeavor to wipe off the reproach of his late ignominious surrender by some signal or desperate undertaking.\*

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APPOINTMENT OF PLENIPOTENTIARIES.

This speech was delivered by Doctor Witherspoon, in the Continental Congress, in the year 1779,\* at the time of the debate on the appointment of foreign ministers:

MR. PRESIDENT:—I am sorry to observe, that after going through the instructions to be given to our plenipotentiary or plenipotentiaries, we should have so warm a debate, and indeed, seem to be so equally divided upon the question, whether there should be one, or more, to whom we will intrust the negotiation.

As to the practice of European nations, I believe it is so various as not to afford any argument on one side or the other; we may appoint one or more,—there will be nothing singular or remarkable in it, so as to make our conduct look like ignorance in such matters. I am inclined to think, however, that negotiations are generally conducted near to their conclusion by one confidential person, though after the more important preliminaries are settled, more may be sometimes appointed to give greater solemnity to the conclusion. We are, therefore, at liberty to determine ourselves, wholly by the general reason and nature of the thing and our own particular circumstances.

As to the first of these, on the side of one person, it may be said, there will be more precision, more expedition, more uniformity, and more certainty of agreement with others and consistency with himself. And the person whom we have employed is a man of sound and clear understanding, and has had the advantage of being a long time in Europe, and no doubt has been turning his thoughts, and making enquiries upon the subject ever since he went there, so that we may suppose him pretty ripely advised.

On the other side it may be said, that, if alone, he might be at a loss, and that it would be of advantage to him to have the advice of others. It is even said, that there is a necessity of others better acquainted with parts of the country different from those with which he has been chiefly connected. As to council, that does not strike me much—perhaps there is greater safety in one than three, because he is fully responsible, whereas, if a common council is taken, the blame is divided and every one is

less difficulted to justify his conduct in the issue. Besides, is there no danger to the cause itself from an obstinate division of sentiments in those who are intrusted with the conduct of it? This would expose us, in the opinion of those who observed it, and might, perhaps, give less respect to what each or all of them might say or do.

As to the necessity of persons from different parts of the country, it is not easy to conceive what circumstances in a negotiation of this kind, can be peculiar to one part of the country more than another. If it were to make rules for the internal government, taxation, or commerce of the States, there would be some force in the remark, but when it is only to make peace, for the liberty and protection of all, there seems to be little weight in it.

But now let us consider our particular circumstances. Mention has been made of the difference between Mr. Adams and the Count

\* The following resolutions were adopted by Congress, on the 8th of January, 1778:

*Resolved*, That as many of the cartouch boxes, and several other articles of military accoutrements, annexed to the persons of the non-commissioned officers and soldiers, included in the Convention of Saratoga, have not been delivered up, the Convention, on the part of the British army, has not been strictly complied with.

*Resolved*, That the refusal of Lieutenant General Burgoyne to give descriptive lists of the non-commissioned officers and privates belonging to his army, subsequent to his declaration that the public faith was broke, is considered by Congress in an alarming point of view, since a compliance with the resolution of Congress could only have been prejudicial to that army, in case of an infraction of the Convention on their part.

*Resolved*, That the charge made by Lieutenant General Burgoyne, in his letter to Major General Gates, of the 14th of November, of a breach of public faith on the part of these States, is not warranted by the just construction of any article of the Convention of Saratoga; that it is a strong indication of his intention, and affords just ground of fear that he will avail himself of such pretended breach of the Convention, in order to disengage himself, and the army under him, of the obligation they are under to these United States, and that security which these States have had in his personal honor is hereby destroyed.

*Resolved*, Therefore, That the embarkation of Lieutenant General Burgoyne, and the troops under his command, be suspended till a distinct and explicit ratification of the Convention of Saratoga shall be properly notified by the court of Great Britain to Congress." *Journals of Congress*, 1778

\* See Journals of Congress, 1779.

de Vergennes. I have given particular attention to all that was said in his letter upon that subject, and all that has been said by the minister of France here, and there was not one hint given that could lead us to think it was their desire or expectation that he should be dismissed or superseded, or even bridled by the addition of others in the commission. We have fully complied with their desire upon this subject in the instructions. There is the greatest reason to think that they are well satisfied upon it. But if we should still go further, and either discharge him, or do what is in substance the same, or might be supposed or conceived by him to be the same, this would be rather an act of too great obsequiousness, and but an ill example for the future conduct of our affairs. What we do now will be often mentioned in after times, and if the like practice prevail, it will discourage public servants from fidelity, and lessen their dignity and firmness. There is also some reason to fear that there may not be the most perfect agreement among them, and if a jealousy in point of affection between them should arise, it might be still more fatal than a difference in opinion. You may observe that Doctor Franklin particularly mentions the impropriety of having more ministers than one at one court, and in the same place. We have felt the bad consequences of that already, in more instances than one. Congress were led into such steps as ended in our parting with Mr. Lee, chiefly by the argument of his being disagreeable to the French court, and though he was, in my opinion, one of the most able, faithful, and active servants we ever had, and certainly one of the most disinterested, he was but barely able to go off with a cold ceremonial adieu, that had very little in it of a grateful sense of his services, or cordial approbation. It is not pleasant to reflect, Mr. President, that so early in the history of this new State, persons in public employment should be so prone to enter into ambitious contentions and push one another into disgrace.

I cannot help putting you in mind, upon this subject, of what has just now come to light. You are informed by the French court, in the most authentic manner, and indeed, if I am not mistaken, it is by implication at least in the king's letter, that you had been ill served by the people you employed there, and cheated both in point of quality and price, and that on this account they intend to give directions on that subject themselves. Now, sir, perhaps it may be news to many members of this body, that these were the very contracts made by Mr. Deane, without the knowledge or consent of Mr. Lee, of which Mr. Lee loudly complained. These were the very servants whose accounts Mr. Lee objected to, and whose conduct he censured. But what did he get by it? Mr. Deane was supported by his venerable old friend, as he called him; Mr. Lee was complained of as jealous and troublesome, and disagreeable to the court of France; and not only

opposed and slighted by many members of this House, but I may say attacked and persecuted in such a manner, that if he had not been supported with a generous frankness by others, might have ended in public infamy.

I have just further upon this subject to observe, that you very lately sent a new minister to the French court, Mr. Laurens, a measure much disapproved by many, and it was then foretold it would be a disgraceful thing to Doctor Franklin. Probably he has conceived it in that light, and as he has no desire at all to return home, I am well convinced that this is the true cause of the desire, expressed in his last letter, to resign his commission.

Some have mentioned the importance of the matter, and that the chance is greater against corruption, where three are to be taken off, than one. It is very true, that *ceteris paribus*, as is commonly said, there is a greater chance for one incorruptible person in three than in one; but there are single persons in whom I would confide as much as in ten. And besides, the thing may be taken the other way; for there is a greater chance of finding one corruptible person in three than in one; and in a commission of that nature, one traitor is able to do much mischief, though the others are perfectly upright. He, being admitted into the secret, may not only disclose measures, but perplex them, let the abilities of his colleagues be what they will. I have seen a man in Congress, who, upon the supposition of his being a traitor, I am sure had address enough to draw many into his measures,—many not contemptible in understanding and sincerely attached to their country's cause.

Before I conclude, I would say a little upon our circumstances in another respect. The first appearances we make upon the public stage, are of consequence. It is to be wished, therefore, that the credit of the United States were consulted. If we were sure that our commissioners would be immediately admitted to public and co-ordinate session with the other plenipotentiaries, perhaps a commission of three would be august and honorable; but, if, as I strongly suspect, will be the case, they are not at first publicly admitted at all, but obliged to negotiate through the plenipotentiaries of France—if, as is not impossible, even in the settlement of the treaty we are not considered as the formal contracting parties at all, but our interest attended to in articles as if were occasionally introduced—if this is done, as a salvo to the honor of England, and to purchase for us advantages substantial and durable, a pompous commission to a number of delegates will rather lessen our dignity and detract from our wisdom and caution.

Upon the whole, sir, I am of opinion, that it would be much better to assign to one the commission already given with the instructions which have been cordially agreed upon, and seem to be in every respect agreeable to the desires of the Court of France and the opinion of the king's minister in this country.



## LOAN-OFFICE CERTIFICATES.

Doctor Witherspoon delivered this speech in Congress, on a motion for paying the interest of loan-office certificates.\*

MR. PRESIDENT: I must entreat the attention of the House, while I endeavor to state this with as much brevity and perspicuity as I am master of. It is not easy to forbear mentioning, yet I shall but barely mention, the distressed and unhappy situation of many of the persons concerned in the public loans. I shall also pass by their characters as whigs and friends to the American cause. I shall pass by the services, which many of them have rendered in their persons, by their friends, by their purses, and by their prayers. These are affecting considerations, which ought not, and which I am confident will not fail to have their weight with every member of this House. Let us then leave these topics altogether, and let us confine ourselves to the duty and interest of the United States in their present situation, when the care of their affairs is committed to us who are here assembled.

Public credit is of the utmost moment to a State which expects to support itself at any time; but it is all in all in a time of war. The want of it defeats the wisest measures, and renders every department torpid and motionless. It cannot be denied that by many unhappy, if not unwise measures, public credit among us has been reduced to the lowest ebb; first, by a monstrous and unheard-of emission of paper money; next by an act of bankruptcy, reducing it to sixpence in the pound; then by a table of depreciation. There remained but one thing which preserved us some degree of respectability, that the promises made to lenders of money before a certain period, had been kept for three years; but now, as the last and finishing stroke, this also is broken to pieces and given to the winds.

Let not gentlemen cry out as before, Why distinguish these people from other public creditors? I do not distinguish them by asking payment for them alone; but I distinguish them because their circumstances and disappointment give a new and disgraceful stroke to the credit of the United States. I distinguish them, because I hope that their sufferings and complaints may induce us to take some step towards the payment of all. Strange it is to the last degree, that this comparison should seem to set gentlemen's minds at ease—because great injury has been done to one class, therefore the same may and ought to be done to another. In this way it would be very easy to rid ourselves of both, and to say, Why all this noise about loan-office certificates? Have not all

the receivers of continental bills suffered as much or more than they, and had the immense sum of two hundred millions sunk in their hands? If this would be a good answer in one case, it certainly would in the other. Now is it proper or safe in our present situation, to refuse all kind of payment to the public creditors in this country, so numerous and so variously circumstanced? Let us examine it a little.

We are now endeavoring to borrow, and have the hope of borrowing money in Europe. Is this the way to succeed? Is it not possible, is it not highly probable, that our treatment of our creditors here, will soon be known there? Nay, are not some of our creditors interested in this very measure, residing there? Must not this repeated insolvency, neglect, and even contempt of public creditors, prevent people from lending us in Europe? I am sorry to say it, but in truth I do believe that it is their ignorance of our situation and past conduct, that alone will make them trust us; I confess, that if I were at Amsterdam just now, and had plenty of money, I would give what I thought proper to the United States, but would lend them none.

It is to be hoped that in time truth and justice will so far prevail, that our posterity will see the necessity of doing their duty; but at present we seem but little disposed to it.—By making some payment to the public creditors immediately, and prosecuting the measures already begun for further security, we should obtain a dignity and weight abroad, that would procure money wherever it could be found.

Let us next consider the effect upon our credit at home. It has ever been my opinion, that if our security were good and our credit entire, so that obligations by the public would be turned into money at any time, at par or at little less, we should find no inconsiderable number of lenders. Every thing of this kind proceeds upon such certain principles as never to fail, in any instance, of having their effect. From the general disposition that prevails in this new country, real estate is less esteemed, and money at interest more, that is to say comparatively speaking, than in the old. Now, whatever success we may have in Europe, I am persuaded we should still need, or at least, be much the better of loans at home, which are in their nature preferable to those abroad, and, therefore, whatever leads utterly to destroy our credit at home, does an essential injury to the public cause. Nay, though there were not any proper loans to be expected or attempted at home, some trusting to public credit would be necessary to make those to whom we are already indebted patient, or at least, silent for some time. To this may be added, that annihilating public credit, or rather rendering it contemptible, has an unhappy influence upon

\* See Journals of Congress; Witherspoon's works, vol. 4, page 289.

every particular internal temporary operation. People will not seek your service but fly from it. Hence it is well known that sometimes stores and ammunition, or other necessities for the army, have stood still upon the road till they were half lost, for want of ready money, or people who would trust you, to carry them forward.

We must now go a little further, and say that if this proposition is enforced, it will be a great hinderance to the payment of taxes and raising the supplies which must be called for from the States. I do not insist upon what has already been mentioned, that the payment proposed would enable many to pay their taxes, because, though that is certainly true with respect to those who shall receive it, and though it is admitted they are pretty numerous, yet in my opinion it is but a trifle to the other effects of it, both in the positive and negative way. It would give dignity to the public spirit, and animation to the people in general. It would give the people better thoughts of their rulers, and prevent murmuring at public persons and public measures. I need not tell this House how much depends, in a free State, upon having the esteem and attachment of the people. It is but a very general view that people at a distance can take of the management of men in public trust, but in general it is well known, they are abundantly jealous, and as ready to believe evil as good. I do not speak by guess but from facts, when I tell you that they say, we are now paying prodigious taxes, but what becomes of all the money? The army, say they, get none of it, being almost two years in arrear. The public creditors say they get none of it, not even interest for their money. This was told me by the county collector of Somerset county, New Jersey, who was not a contentious man, but wished to know what he ought to say to the people. Now this small payment, as it would be very general, would be much talked of, and I am persuaded, for its general good influence, would be worth all and more than all the sum we shall bestow. I have heard it said, in some similar cases, you must sometimes throw a little water into a pump in order to bring a great deal out of it.

Now, on the other hand, what will be the consequence of a total refusal? You have told the public creditors that you have no money in Europe to draw for. They will very speedily hear of this loan in Holland. They are sufficiently exasperated already, this will add to their indignation. They really are already sore, their minds will be rankled more than ever. They are looking with an evil eye upon some new men coming into play, and thinking themselves unjustly and ungratefully used. I believe they are not so much without principle, as to

turn their backs upon the public cause, but a spirit of faction and general discontent upon such plausible ground, may do it essential injury. They may combine to refuse their taxes, and if any such unhappy association should be formed, it would spread, and many, from a blind attachment to their own interests, would pretend to be upon the same footing, though they have no concern in the matter, and if this disposition should become general, it would put an entire stop to all our proceedings. This discouraging prospect is not merely founded on conjecture. I have been told that there have already been meetings for entering into concert for refusing to pay taxes. Is it possible we can, in our circumstances, more profitably employ the sum mentioned in the motion, than in giving satisfaction to a deserving body of men, and in preventing evils of so alarming a nature?

It is possible, sir, that some are comforting themselves with their own sincerity and good intentions; that they ultimately resolve to pay all honorably; that they have taken, and are taking measures to prepare for it. A sum of money is called for on purpose to pay the interest of the public debts, and the five per cent. impost is appropriated to the same purpose. But, sir, it will take a considerable time before the most speedy of these measures can bring money into the treasury, and in the mean time the late step of refusing to draw bills, has given such a stroke to loan office certificates that their value is fallen to a very trifle—the spirits of the people are broken—a gentleman told me the other day, “I see the loan office certificates are gone as well as all the rest of the money.” The inevitable consequence will be, that hard and irresistible necessity, or incredulity or ill humor will make them part with them for a mere nothing, and then the greatest part of them, by far, will really be in the hands of speculators. When this is notoriously the case, I shall not be at all surprised to find that somebody will propose a new scale of depreciation, and say to the holders, you shall have them for what they were worth and generally sold at, at such a time. Past experience justifies this expectation, and no declaration we can make to the contrary will be stronger than that of Congress in the year 1779, that they would redeem the money, and that it was a vile and slanderous assertion that they would suffer it to sink in people's hands. I know particular persons also, who, by believing this declaration, lost their all. Now, if this shall be the case again, public faith will be once more trodden under foot, and the few remaining original holders of certificates will lose them entirely, being taken in connection with those who purchased them at an under value.

## SPEECH ON THE FINANCES.

The following is a portion of a speech delivered in Congress, on the resolutions reported by the superintendent of finance.\*

MR. PRESIDENT: I have little to say against the resolutions, as they stand reported by the superintendent of finance. Perhaps they are unavoidable in the circumstances to which we are reduced. Yet the step seems to be so very important, and the consequences of it so much to be dreaded, that I must entreat the patience of the House, till I state the danger in a few words, and examine whether any thing can possibly be added to it which may in some degree prevent the evils which we apprehend, or at least exculpate Congress and convince the public that it is the effect of absolute necessity.

Sir, if we enter into these resolves as they stand, it will be a deliberate deviation from an express and absolute stipulation, and therefore it will, as it was expressed by an honorable gentleman the other day, give the last stab to public credit. It will be in vain, in future, to ask the public to believe any promise we shall make, even when the most clear and explicit grounds of confidence are produced. Perhaps it will be said that public credit is already gone; and it has been said that there is no more in this, than in neglecting to pay the interest of the loan-office certificates of later date; but though there were no other differences between them, this being another and fresher instance of the same, will have an additional evil influence upon public credit. But in fact, there is something more in it than in the other. The solemn stipulation of Congress, specifying the manner in which the interest was to be paid, was considered as an additional security, and gave a value to these certificates, which the other never had. I beg that no gentleman may think that I hold it a light matter to withhold the interest from the other lenders; they will be convinced, I hope, of the contrary, before I have done; but I have made the comparison merely to show what will be the influence of this measure upon the public mind; and therefore upon the credit and estimation of Congress. Now it is plain that the particular promise of giving bills upon Europe, as it had an effect, and was intended to have it in procuring credit, it must, when broken or withdrawn, operate in the most powerful manner to our prejudice. I will give an example of this; in our melancholy, past experience. The old continental money was disgraced, and sunk first by the act of March 18th, 1780,† (which the Duke de Vergennes justly called an act of bankruptcy,)

telling you would pay no more of your debt than sixpence in the pound. This was afterwards further improved by new estimates of depreciation, of seventy-five and one hundred and fifty, for new State paper, which itself was sunk to two or three for one, and yet bad as these men's cases were, the disgrace arising from them was more than doubled, by people's referring to and repeating a public declaration of Congress, in which we complained of the injurious slanders of those that said we would suffer the money to sink in the hands of the holders, and making the most solemn protestations, that ultimately the money should be redeemed dollar for dollar; and to my knowledge, some trusting to that very declaration, sold their estates at what they thought a high price, and brought themselves to utter ruin.

I cannot help requesting Congress to attend to the state of those persons who held the loan-office certificates which drew interest on France; they are all, without exception, the firmest and fastest friends to the cause of America; they were in general the most firm and active and generous friends. Many of them advanced large sums in hard money, to assist you in carrying on the war in Canada. None of them at all put away even the loan-office certificates on speculation, but either from a generous intention of serving the public, or from an entire confidence in the public credit. There is one circumstance which ought to be attended to, viz: the promise of interest—bills on Europe were not made till the 10th of September, 1777. It was said a day or two ago, that those who sent in cash a little before March 1st, 1778, had, by the depreciated state of the money, received almost their principal; but this makes but a small part of the money, for there were but six months for the people to put in the money, after the promise was made; only the most apparent justice obliged Congress to extend the privilege to those who had put in their money before. Besides nothing can be more unequal and injurious than reckoning the money by the depreciation, either before or after the 1st of March, 1778, for a great part of the money in all the loan-offices was such as had been paid up in its nominal value, in consequence of the Tender laws.

This points you, sir, to another class of people, from whom money was taken, viz: widows and orphans, corporations and public bodies. How many guardians were actually led, or indeed were obliged to put their depreciated and depreciating money in the funds—I speak from good knowledge. The trustees of the College of New Jersey, in June, 1777, directed a committee of theirs to put all the money that should be paid up to them, in the loan-office, so that they have now nearly invested all. Some put in before March, 1778, and a greater part subsequent.

\* See Journals of Congress, 1780-1788.

† See Journals of Congress, 1780, vol. 3, page 442—edition of 1923.

to that date. Now it must be known to every body, that since the payment of the interest bills gave a value to these early loans, many have continued their interest in them, and rested in a manner wholly on them for support. Had they entertained the slightest suspicion that they would be cut off, they could have sold them for something, and applied themselves to other means of subsistence; but as the case now stands, you are reducing not an inconsiderable number of your very best friends to absolute beggary. During the whole period, and through the whole system of continental money, your friends have suffered alone—the disaffected and lukewarm have always evaded the burden—have in many instances turned the sufferings of the country to their own account—have triumphed over the whigs—and if the whole shall be crowned with this last stroke, it seems but reasonable that they should treat us with insult and derision. And what faith do you expect the public creditors should place in your promise of ever paying them at all? What reason, after what is past, have they to dread that you will divert the fund which is now mentioned as a distant source of payment? If a future Congress should do this, it would not be one whit worse than what has been already done.

I wish, sir, this House would weigh a little the public consequences that will immediately follow this resolution. The grief, disappointment, and sufferings of your best friends have been already mentioned—then prepare yourselves to hear from your enemies the most insulting abuse. You will be accused of the most oppressive tyranny, and the grossest fraud. If it be possible to poison the minds of the public by making this body ridiculous or contemptible, they will have the fairest opportunity of doing so that ever was put in their hands; but I must return to our plundered, long ruined friends; we cannot say to what their rage and disappointment may bring them, we know that nothing on earth is so deeply resentful as despised or rejected love—whether they may proceed to any violent or disorderly measures it is impossible to know. We have an old proverb, That the eyes will break through stone walls, and for my own part I should very much dread the furious and violent efforts of despair. Would to God that the independence of America was once established by a treaty of peace in Europe, for we know that in all great and fierce political contentions, the effect of power and circumstances is very great, and that if the tide has run long with great violence one way, if it does not fully reach its purpose and is by any means brought to a stand, it is apt to take a direction and return with the same, or greater violence than it advanced. Must this be risked at a crisis when the people begin to be fatigued with the war; to feel the heavy expense of it by paying taxes, and when the enemy, convinced of their folly in their former severities, are doing every thing they can to ingratiate themselves with the public at large. But

though our friends should not be induced to take violent and seditious measures all at once, I am almost certain it will produce a particular hatred and contempt of Congress, the representative body of the Union, and still a greater hatred of the individuals who compose the body at this time. One thing will undoubtedly happen, that it will greatly abate the respect which is due from the public to this body, and therefore, weaken their authority in all other parts of their proceedings.

I beg leave to say, sir, that in all probability it will lay the foundation for other greater and more scandalous steps of the same kind. You will say what greater can there be? Look back a little to your history. The first great and deliberate breach of public faith was the act of March eighteenth, 1780, reducing the money to forty for one, which was declaring you would pay your debt at sixpence in the pound. But did it not turn? No! by and by it was set in this State, and others, at seventy-five, and finally set one hundred and fifty for one, in new paper in State paper, which in six months rose to four for one. Now, sir, what will be the case with these certificates? Before this proposal was known their fixed price was about half a crown for a dollar, of the estimated depreciated value; when this resolution is fairly fixed, they will immediately fall in value, perhaps to a shilling the dollar, probably less. Multitudes of people in despair and absolute necessity, will sell them for next to nothing, and when the holders come at last to apply for their money, I think it highly probable you will give them a scale of depreciation, and tell them, they cost so little that it would be an injury to the public to pay the full value. And in truth, sir, supposing you finally to pay the full value of the certificates to the holders, the original and most meritorious proprietors will, in many, perhaps in most cases, lose the whole.

It will be very proper to consider what effect this will have upon foreign nations; certainly it will set us in a most contemptible light. We are just beginning to appear among the powers of the earth, and it may be said of national, as of private, characters, they soon begin to form, and when disadvantageous ideas are formed, they are not easily altered or destroyed. In the very instance before us, many of these certificates are possessed by the subjects of foreign princes, and indeed are in foreign parts. We must not think that other sovereigns will suffer their subjects to be plundered in so wanton and extravagant a manner. You have on your files letters from the Count de Vergennes, on the subject of your former depreciation, in which he tells you, that whatever liberty you take with your own subjects, you must not think of treating the subjects of France in the same way, and it is not impossible that you may hear upon this subject, what you little expect, when the terms of peace are to be settled. I do not, in the least, doubt that it may be demanded that you should pay to the full of its nominal value,

all the money, as well as loan office certificates, which shall be found in the hands of the subjects of France, Spain, or Holland, and it would be perfectly just. I have mentioned France, &c., but it is not only not impossible, but highly probable, that by accident or danger, or both, many of these loan office certificates may be in the hands of English subjects. Do you think they will not demand payment? Do you think they will make any difference between their being before or after March first, 1778? And will you present them with a scale of depreciation? Remember the affair of the Canada bills, in the last peace between England and France. I wish we could take example from our enemies. How many fine dissertations have we upon the merit of national truth and honor in Great Britain. Can we think, without blushing, upon our contrary conduct in the matter of finance? By their punctuality in fulfilling their engagements as to interest, they have been able to support a load of debt, altogether enormous. Be pleased to observe, sir, that they are not wholly without experience of depreciation: navy debentures and sailors' tickets have been frequently sold at an half, and sometimes even at a third of their value; by that means they seem to be held by that class of men called, by us, speculators. Did that government ever think of presenting the holders of them, when they came to be paid, with a scale of depreciation? The very idea of it would knock the whole system of public credit to pieces.

But the importance of this matter will be felt before the end of the war. We are at this time earnestly soliciting foreign loans. With what face can we expect to have credit in foreign parts, and in future loans, after we have so notoriously broken every engagement which we have hitherto made? A disposition to pay, and visible, probable means of payment, are absolutely necessary to credit; and where that is once established, it is not difficult to borrow.

If it may be a means of turning the attention of Congress to this subject, I beg of them to observe, that if they could but lay down a foundation of credit, they would get money enough to borrow in this country, where we are. There is property enough here; and, comparatively speaking, there is a greater number of persons here who would prefer money at interest, to purchasing and holding real estates. The ideas of all old country people are high in favor of real estate. Though the interest of money, even upon the very best security there, is from four to four and a half, four and three quarters and five per centum; yet when any real estate is to be sold, there will be ten purchasers where one only can obtain it, and it will cost so much as not to bring more than two, two and a half, and at most three per centum.

It is quite otherwise in this country, and indeed it ought to be otherwise. To purchase an estate in the cultivated parts of the country, except what a man possesses himself, will not be near so profitable as the interest of money; and in many cases, where it is rented out, it is so wasted and worn by the tenant, that it would be a greater profit at the end of seven years, that the land had been left to itself, to bear woods and bushes that should rot upon the ground, without any rent at all. Any body also, may see, that it is almost universal in this country, when a man dies leaving infant children, that the executors sell all his property to turn it into money and put it in securities for easy and equal division.

All these things, Mr. President, proceed upon certain and indubitable principles, which never fail of their effect. Therefore you have only to make your payments as soon, as regular, and as profitable as other borrowers, and you will get all the money you want; and by a small advantage over others, it will be poured in upon you, so that you shall not need to go to the lenders, for they will come to you.

## DAVID RAMSAY.

This distinguished patriot, physician, and historical writer, was born in Lancaster county, Pennsylvania, on the second day of April, 1749. His father, James Ramsay, a native of Ireland, who emigrated to America when quite a youth, was a farmer of enterprise and respectability. Fully aware of the advantages of a liberal education, he placed his sons under the tuition of English and classical preceptors, and in due course entered them at the College of New Jersey, from which institution they graduated with honor and literary distinction. William, the eldest, became a respectable divine; Nathaniel studied law, and David, the youngest and the subject of this sketch, directed his attention to the study of medicine.

At a very early period in life, he manifested an ardent attachment to books, and his rapid progress in the acquirement of knowledge excited the remark and admiration of his family and friends. At six years of age he read the Scriptures with facility, and was peculiarly delighted with the historical portions of them. Before he had attained his twelfth year, he was very proficient in the primary classics, and fully qualified for admission to college. But, owing to his extreme youth, his entrance was delayed about a year, during which time he occupied the position of assistant tutor in an Academy at Carlisle, where he acquitted himself with great credit. Entering the sophomore class of the College at Princeton, and perfecting his course with diligence and honor, he graduated in 1765, being then a youth of but sixteen years. From college he went to Maryland, and engaged as a private tutor; during the hours unappropriated to the instruction of his pupils, devoting himself to general reading and enriching his mind with the stores of useful knowledge.

Resolving on the study of medicine, he pursued his object with great perseverance. He commenced his professional studies under the care of the eminent Doctor Bond, in Philadelphia, and there attended the lectures of the College of Pennsylvania. Here he attracted the attention of Doctor Rush, who was at that time the professor of chemistry in the institution, and soon became his cherished friend and companion. Early in 1772, Mr. Ramsay graduated Bachelor of Physic, and immediately entered upon the practice of his profession at the *Head of the Bohemia*, in Maryland, where he remained about one year; after which he removed to Charleston, South Carolina. In a letter written about this time, Doctor Rush thus speaks of his young friend:—"Dr. Ramsay studied physic regularly with Dr. Bond, attended the hospital, and public lectures of medicine, and afterwards graduated Bachelor of Physic, with great eclat; it is saying but little of him to tell you, that he is far superior to any person we ever graduated at our college; his abilities are not only good, but great; his talents and knowledge universal; I never saw so much strength of memory and imagination united to so fine a judgment. His manners are polished and agreeable—his conversation lively, and his behavior, to all men, always without offence. Joined to all these, he is sound in his principles, strict, nay more, severe in his morals, and attached, not by education only, but by principle, to the dissenting interest. He will be an acquisition to your society. He writes—talks—and what is more, lives well. I can promise more for him, in every thing, than I could for myself."—Thus was Doctor Ramsay introduced to the people of Charleston.

Soon after his settlement in his new home, he acquired a great reputation in his profession, and rose to eminence and respect. On the fourth of July, 1778, he was appointed to deliver an anniversary oration before the citizens of Charleston, and in defence of the policy of the colonists throughout the war, he wrote, spoke, and acted boldly and constantly. Many of the able and humorous fugitive pieces that appeared in the public journals during the war, were written by him. For a short period he was attached to the American army as a surgeon, and was present at the siege of Savannah, in 1779. After the Declaration of Independence he became an active and leading member of the Legislature of South Carolina, and continued in that assembly until the close of the war. During this time he was taken prisoner by the British, and sent, with many other citizens of Charleston, to St. Augustine, where he remained in exile for the space of eleven months. On his return to Charleston he resumed his seat in the Legislature, which had adjourned its sessions to Jacksonburgh. Here he opposed the acts confiscating the estates of those who had adhered to the cause of Great Britain. "Though convinced that the conduct of some of those who came under the operation of those acts, merited the severest punishment, he tenderly commiserated many who he was persuaded acted from the dictates of their consciences. The latter he would have exempted from the penalties of confiscation." In February, 1782, Doctor Ramsay was elected to the Continental Congress, in which body he exerted a great influence, especially in procuring relief for the Southern States, at that time suffering severely from the incursions and unopposed ravages of the British army. On the declaration of peace he returned to his home, and again commenced the practice of medicine; but he did not long remain out of public life. In 1785, he was again sent to Congress, and, owing to the absence of John Hancock, the president of that body, was chosen president *pro tempore*, and continued for a whole year to discharge the duties of that station with ability, industry, and impartiality. The next year he returned to Charleston and resumed the duties of his profession, in which he continued with increasing reputation until his death.

In the character of an author, Doctor Ramsay was most generally known and distinguished. His tastes, learning, and eminent industry peculiarly adapted him for the study of history, and the part he bore in the trials of the Revolution enabled him to record from observation the merits of that struggle. In 1785 his *History of the Revolution in South Carolina* appeared, "after having been submitted to the perusal of General Greene, who gave his assent to all the statements made therein." This work soon became very popular in the United States, it was subsequently translated into French, and excited great admiration and interest in Europe. The same year he commenced a History of the Revolution. His position in the Congress enabled him with great facility to collect the important materials for this work. From Doctor Franklin and Doctor Witherspoon he received great assistance; and also much important information from General Washington, who he visited at Mount Vernon for the purpose of consultation. This work appeared in 1790, and met with the universal approbation of the literary world. In 1801 he published his *Life of Washington*, and in 1808, his *History of South Carolina* appeared.\* On the death of his wife, in 1811, he published an interesting memorial of her life, containing some of her own literary productions. In addition to these works, he published several interesting medical treatises, and fugitive pieces, all of which evince his characteristic energy and devotion to the welfare of his fellow men.†

The most important and ablest work of Dr. Ramsay was not published until after his death. This was a series of historical volumes, entitled, *Universal History Americanized; or, a Historical View of the World, from the Earliest Records to the Nineteenth Century, with a*

\* This is an extension of an interesting work entitled, *A Sketch of the Soil, Climate, Weather and Diseases of South Carolina*, published by Dr. Ramsay in 1796.

† These works were—*An Oration on the Cession of Louisiana to the United States*, 1804; *A Review of the Improvements, Progress, and State of Medicine in the Eighteenth Century*, delivered on the first day of the nineteenth century; *A Medical Register for 1802*; *A Dissertation on the Means of Preserving Health in Charleston*; *A Biographical Chart, on a new plan, to facilitate the study of History*; *Eulogium on Doctor Rush*, and *The History of the Independent or Congregational Church in Charleston, South Carolina, from its origin till the year 1814*. The last work was published in 1815. It contains the celebrated speech of the Rev. William Tennent, on the *Dissenting Petition*, in the Commons House of Assembly, Charleston, South Carolina, January 11, 1777.

*Particular Reference to the State of Society, Literature, Religion, and Form of Government in the United States of America.* This work, which employed the mind of its author "for upward of forty years," was undertaken with a view of reducing all valuable historical facts within a small compass, to form a digest for the use of those whose leisure would not admit of more extensive reading, and to restore to his beloved country the importance to which she was entitled.

Doctor Ramsay died on the eighth of May, 1815. He fell by the hands of an assassin. A man by the name of William Linnen, a tailor by trade, had been long remarked for singularity of conduct. Having been engaged in some lawsuits, he conceived that he had suffered injustice through the misconduct of his lawyer, the judges, and the jury. To obtain redress for these supposed injuries, he petitioned the Legislature repeatedly, and actually walked the whole way to Washington on foot, to endeavor to procure the impeachment of one of the judges of the supreme court. At last he became desperate, and was heard to declare, "that as the laws afforded him no protection he meant to protect himself." Soon after this he made an attempt upon the life of his attorney, and wounded him severely. For this offence he was thrown into prison. On being arraigned, it was represented to the court that he was under the influence of mental derangement. Doctor Ramsay and Doctor Benjamin Simons were appointed by the court to examine and report on his case. They concurred in opinion that Linnen was deranged, and that it would be dangerous to let him go at large. He was, therefore, remanded to prison, where he was confined until exhibiting symptoms of returning sanity, he was discharged. He behaved himself peaceably for some time, but was heard to declare, that he would "kill the doctors who had joined the conspiracy against him." This threat was communicated to Doctor Ramsay, but conscious of having given no cause of offence, he disregarded it. On Saturday, the sixth day of May, Doctor Ramsay was met in Broad street, Charleston, about one o'clock in the afternoon, within sight of his own door, by the wretched maniac, who passed by, and taking a large horseman's pistol out of a handkerchief, in which it was concealed, shot the doctor in the back. The pistol was charged with three bullets; one passed through the coat without doing any injury, one entered the hip and passed out at the groin, and the third entered the back near the kidneys, and lodged in the intestines. After being carried home, surrounded by a throng of anxious citizens, and calling their attention to what he was about to utter, he said, "I know not if these wounds be mortal. I am not afraid to die, but should that be my fate, I call on all here present to bear witness that I consider the unfortunate perpetrator of this deed a lunatic, and free from guilt." He lingered two days and then "slept in peace."\*

#### THE ADVANTAGES OF AMERICAN INDEPENDENCE.

This oration was delivered before a public assembly of the inhabitants of Charleston, in South Carolina, on the fourth of July, 1778. Subsequently it was published, dedicated to Governor Christopher Gadsden, "who fearless of danger, undaunted by opposition, uninfluenced by the hope of reward, in the worst of times, has stood among the foremost, an early, active, zealous, disinterested champion in the

cause of American Liberty and Independence."\*

FRIENDS AND FELLOW-CITIZENS: Impressed with the deepest sense of my insufficiency, I rise to address you with peculiar diffidence. When I consider the knowledge and eloquence necessary to display the glorious prospects which independence opens to this continent, I am stung with a degree of self-reproach for undertaking the important task. But your known attachment to the cause of America,

\* In the preparation of this sketch the editor has relied entirely on the eloquent and affectionate memorial of Doctor Ramsay, by Robert Y. Hayne, published in the *Analectic Magazine* for September, 1815.

\* Dr. Ramsay states in the dedication, that this oration was originally drawn up at the request of Christopher Gadsden.—See biographical note at page 118.



encourages me to hope, that you will receive with indulgence, a well-intended exertion to promote her welfare; and emboldens me to cast myself on that candor, which looks with kindness on the feeblest efforts of an honest mind.

We are now celebrating the anniversary of our emancipation from British tyranny; an event that will constitute an illustrious era in the history of the world, and which promises an extension of all those blessings to our country, for which we would choose to live, or dare to die.

Our present form of government is every way preferable to the royal one we have lately renounced. It is much more favorable to purity of morals, and better calculated to promote all our important interests. Honesty, plain-dealing, and simple manners, were never made the patterns of courtly behavior. Artificial manners always prevail in kingly governments; and royal courts are reservoirs, from whence insincerity, hypocrisy, dissimulation, pride, luxury, and extravagance, deluge and overwhelm the body of the people. On the other hand, republics are favorable to truth, sincerity, frugality, industry, and simplicity of manners. Equality, the life and soul of commonwealths, cuts off all pretensions to preferment, but those which arise from extraordinary merit: Whereas in royal governments, he that can best please his superiors, by the low acts of fawning and adulation, is most likely to obtain favor.

It was the interest of Great Britain to encourage our dissipation and extravagance, for the twofold purpose of increasing the sale of her manufactures, and of perpetuating our subordination. In vain we sought to check the growth of luxury, by sumptuary laws: Every wholesome restraint of this kind was sure to meet with the royal negative, while the whole force of example was employed to induce us to copy the dissipated manners of the country from which we sprung. If, therefore, we had continued dependent, our frugality, industry, and simplicity of manners, would have been lost in an imitation of British extravagance, idleness, and false refinements.

How much more happy is our present situation, when necessity, co-operating with the love of our country, compels us to adopt both public and private economy? Many are now industriously clothing themselves and their families in sober homespun, who, had we remained dependent, would have been spending their time in idleness, and strutting in the costly robes of British gayety.

The arts and sciences, which languished under the low prospects of subjection, will now raise their drooping heads, and spread far and wide, till they have reached the remotest parts of this untutored continent. It is the happiness of our present constitution, that all offices lie open to men of merit, of whatever rank or condition; and that even the reins of state may be held by the son of the poorest man, if possessed of abilities equal to the important station. We are no more to look up for the bless-

sings of government to hungry courtiers, or the needy dependents of British nobility; but must educate our own children for these exalted purposes. When subjects, we had scarce any other share in government, but to obey the arbitrary mandates of a British parliament. But honor, with her dazzling pomp, interest, with her golden lure, and patriotism, with her heartfelt satisfaction, jointly call upon us now to qualify ourselves and posterity for the bench, the army, the navy, the learned professions, and all the departments of civil government. The independence of our country holds forth such generous encouragement to youth, as cannot fail of making many of them despite the siren calls of luxury and mirth, and pursue heaven-born wisdom with unwearied application. A few years will now produce a much greater number of men of learning and abilities, than we could have expected for ages in our boyish state of minority, guided by the leading-strings of a parent country.

How trifling the objects of deliberation that came before our former legislative assemblies, compared with the great and important matters, on which they must now decide! They might then, with the leave of the king, his governors and councils, make laws about yoking hogs, branding cattle, or making rice: but they are now called upon to determine on peace and war, treaties and negotiations with foreign states, and other subjects interesting to the peace, liberty, sovereignty, and independence, of a wide extended empire. No wonder that so little attention has been paid to learning; for ignorance was better than knowledge, while our abject and humiliating condition so effectually tended to crush the exertions of the human mind, and to extinguish a generous ardor for literary pre-eminence.

The times in which we live, and the governments we have lately adopted, all conspire to fan the sparks of genius in every breast, and kindle them into flame. When, like children, we were under the guardianship of a foreign power, our limited attention was naturally engrossed by agriculture, or directed to the low pursuit of wealth. In this State, the powers of the soul, benumbed with ease and indolence, sunk us into sloth and effeminacy. Hardships, dangers, and proper opportunities, give scope to active virtues, and rouse the mind to such vigorous exertions, as command the admiration of an applauding world. Rome, when she filled the earth with the terror of her arms, sometimes called her generals from the plough. In like manner, the great want of proper persons to fill high stations, has drawn from obscurity many illustrious characters, which will dazzle the world with the splendor of their names. The necessities of our country require the utmost exertions of all our powers; from which vigorous, united efforts, much more improvement of the human mind is to be expected, than if we had remained in a torpid state of dependence.

Eloquence is the child of a free state. In this form of government, as public measures are determined by a majority of votes, arguments enforced by the arts of persuasion, must evermore be crowned with success. The rising patriot, therefore, who wishes the happiness of his country, will cultivate the art of public speaking. In royal governments, where the will of one or a few has the direction of public measures, the orator may harangue, but most probably will reap prosecution and imprisonment, as the fruit of his labor: Whereas, in our present happy system, the poorest school-boy may prosecute his studies with increasing ardor, from the prospect, that in a few years, he may, by his improved abilities, direct the determinations of public bodies, on subjects of the most stupendous consequence.

Thus might I go through the whole circle of the arts and sciences, and show that, while we remained British subjects, cramped and restrained by the limited views of dependence, each one of them would dwindle and decay, compared with the perfection and glory in which they will bloom and flourish, under the enlivening sunshine of freedom and independence.

I appeal to the experience of all, whether they do not feel an elevation of soul, growing out of the emancipation of their country, while they recollect that they are no longer subject to lawless will, but possess the powers of self-government, and are called upon to bear an active part in supporting and perpetuating the sovereignty of the United States; and in organizing them in such a manner, as will produce the greatest portion of political happiness to the present and future generations. In this elevation of soul, consists true genius, which is cramped by kingly government, and can only flourish in free states.

The attention of thousands is now called forth from their ordinary employments, to subjects connected with the sovereignty and happiness of a great continent. As no one can tell to what extent the human mind may be cultivated, so no one can foresee what great events may be brought into existence, by the exertions of so many minds expanded by close attention to subjects of such vast importance.

The royal society was founded immediately after the termination of the civil wars in England. In like manner, may we not hope, as soon as this contest is ended, that the exalted spirits of our politicians and warriors will engage in the enlargement of public happiness, by cultivating the arts of peace, and promoting useful knowledge, with an ardor equal to that which first roused them to bleed in the cause of liberty and their country? Their genius, sharpened by their present glorious exertions, will naturally seek for a continuance of suitable employment. Having, with well tried swords and prudent counsels, secured liberty and independence for themselves and posterity, their great souls will stoop to nothing less than con-

certing wise schemes of civil polity and happiness—instructing the world in useful arts—and extending the empire of science. I foresee societies formed of our heroes and statesmen, released from their present cares; some of which will teach mankind to plough, sow, plant, build, and improve the rough face of nature; while others critically examine the various productions of the animal, vegetable, and mineral kingdoms, and teach their countrymen to “look through nature up to nature’s God.” Little has been hitherto done towards completing the natural history of America, or for the improvement of agriculture, and the peaceful arts of civil life; but who will be surprised at this, who considers that during the long past night of 150 years, our minds were depressed, and our activity benumbed by the low prospects of subjection? Future diligence will convince the candid world, that past inattention was the effect of our dependent form of government.

Every circumstance concurs to make it probable, that the arts and sciences will be cultivated, extended, and improved, in independent America. They require a fresh soil, and always flourish most in new countries. A large volume of the book of nature, yet unread, is open before us, and invites our attentive perusal. Many useful plants, unknown to the most industrious botanist, waste their virtues in our desert air. Various parts of our country, hitherto untrod by the foot of any chemist, abound with different minerals. We stand on the shoulders of our predecessors, with respect to the arts that depend on experiment and observation. The face of our country, intersected by rivers, or covered by woods and swamps, gives ample scope for the improvement of mechanics, mathematics, and natural philosophy. Our free governments are the proper nurseries of rhetoric, criticism, and the arts, which are founded on the philosophy of the human mind. In monarchies, an extreme degree of politeness disguises the simplicity of nature, and “sets the looks at variance with the thoughts;” in republics, mankind appear as they really are, without any false coloring. In these governments, therefore, attentive observers have an opportunity of knowing all the avenues to the heart, and of thoroughly understanding human nature. The great inferiority of the moderns to the ancients in fine writing, is to be referred to this veil cast over mankind by the artificial refinements of modern monarchies. From the operation of similar causes, it is hoped, that the free governments of America will produce poets, orators, critics and historians, equal to the most celebrated of the ancient commonwealths of Greece and Italy.

Large empires are less favorable to true philosophy, than small, independent states. The authority of a great author is apt, in the former case, to extinguish a free inquiry, and to give currency to falsehood unexamined. The doctrines of Confucius were believed all over China, and the philosophy of Descartes, in France.

but neighboring nations, examining them without partiality or prepossession, exploded them both. For the same reason, our separate States, jealous of the literary reputation of each other, and uninfluenced by any partial bias, will critically pry into the merit of every new opinion and system, and naught but truth will stand the test, and finally prevail.

In monarchies, favor is the source of preferment; but, in our new forms of government, no one can command the suffrages of the people, unless by his superior merit and capacity.

The weight of each State, in the continental scale, will ever be proportioned to the abilities of its representatives in Congress. Hence, an emulation will take place, each contending with the other, which shall produce the most accomplished statesmen. From the joint influence of all these combined causes, it may strongly be presumed, that literature will flourish in America, and that our independence will be an illustrious epoch, remarkable for the spreading and improvement of science.

A zeal for promoting learning, unknown in the days of our subjection, has already begun to overspread these United States. In the last session of our Assembly, three societies were incorporated for the laudable purpose of erecting seminaries of education. Nor is the noble spirit confined to us alone; even now, amidst the tumults of war, literary institutions are forming all over the continent, which must light up such a blaze of knowledge as cannot fail to burn, and catch, and spread, until it has finally illuminated, with the rays of science, the most distant retreats of ignorance and barbarity.

Our change of government smiles upon our commerce with an aspect peculiarly benign and favorable. In a few years we may expect to see the colors of France, Spain, Holland, Prussia, Portugal, and those of every other maritime power, waving on our coasts, whilst Americans unfurl the thirteen stripes in the remotest harbors of the world. Our different climates and soils produce a great variety of useful commodities. The sea washes our coast along an extensive tract of two thousand miles, and no country abounds in a greater plenty of the materials for ship-building, or has a better prospect of a respectable navy. Our stately oaks, the greater part of which would probably have withered in their native spots, had we remained subjects, will now be converted into ships of war, to ride triumphant on the ocean, and to carry American thunder around the world. Whole forests will be transformed into vessels of commerce, enriching this independent continent with the produce of every clime and every soil. The wealth of Europe, Asia, and Africa, will flow in upon America; our trade will no longer be confined by the selfish regulations of an avaricious step-dame, but follow wherever interest leads the way. Our great object, as a trading people, should be to procure the best prices for our commodities, and foreign articles at the most reasonable rates.

But all this was cruelly reversed by acts of the British Parliament, regulating our trade in a subserviency to their own emolument, our interest being entirely out of the question. It requires but a moment's recollection to convince us, that as we now have a free trade with all the world, we shall obtain a more generous price for our produce, and foreign goods on easier terms than we ever could while we were subject to a British monopoly.\* The boasted act of navigation was not intended for our advantage, nor for the advantage of the whole empire, but was a glaring monument of the all-grasping nature of unlimited power. To enumerate all the ungenerous restrictions imposed by the British government on American commerce, would be an outrage on patience. Time only will unfold the whole of this mystery of iniquity. A few years' experience will show such an amazing difference between the fettered trade of the British colonies, and the extensive

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\* That British merchants gave us a low price for our commodities, appears from this single consideration—they made money by exporting them from England. If they found it profitable to export tobacco, rice, indigo, &c., from Britain, it must be in consequence of their allowing the American colonists less for those articles than they would have brought in European markets. In this manner, much of our produce was sold to the consumers, loaded with double freight, insurance, and commissions, over and above the additional expense of unloading and reloading in Great Britain. The industrious American planter received no more for his produce than the pittance the British merchant, after reserving his own profit, was pleased to allow on the sale thereof, brought to market charged with this unnecessary expense. The distance from America to those places of Europe which consumed our staples, is generally less than to the British ports. From all which premises, it appears undeniably evident, that American commodities, carried directly to the countries where they are consumed, will produce much more clear profit to the planter, than when they arrived there by the circuitous way of Great Britain.

The same reasoning holds good with respect to many articles imported from England, which were not of its own growth or manufacture; for they would come much cheaper from the countries where they were made, than they ever could, while we were obliged to receive them through the hands of British merchants, loaded with double freight, insurance, commissions, and sometimes with duties. If interest had not silenced the voice of justice, Great Britain, while she obliged us to buy at her market, would have considered herself as bound to supply our wants as cheap as they could be supplied elsewhere. But instead of this, she not only fixed exorbitant prices on articles of her own production but refused us the liberty of buying from foreigners those articles which her own markets did not afford, and had also begun the fatal policy of super-adding additional duties. What a scene of oppression does this open to us? A great part of the price for which our commodities sold in Europe was lodged in British coffers; and we were obliged to buy manufactures of her production, at prices of her own fixing, and were restrained from buying even those articles which she could not raise, where they could be got cheapest. Besides, as we durst not buy from any others, they had it in their power to fix any advance on the first cost that their avarice prescribed, and our necessities would permit.—*Author of the Oration.*

commerce of the free, independent States of America, as will cause us to stand amazed that we so long and so patiently submitted to so many and such cruel restrictions. In one word, so long as we remained dependent, the commerce of this great continent would have been sacrificed to the interest of a selfish European island.

Carolina had particular reason to wish for the free trade of independence.\* The whole island of Great Britain did not annually consume more than five thousand barrels of her staple commodity, rice, and yet it was an enumerated article. The charge on unloading, reloading, and shifting every cask, owing to this enumeration, was immense, though it served no other purpose, but to procure jobs for British coopers and wharfingers. So little regard was had to our interest, while dependent, that this enumeration was obtained by the instigation of a Captain Cole. Several vessels coming from England before him, and purchasing rice for Portugal, prevented the aforesaid captain of a loading; he returned, and in resentment said, carrying rice to Portugal was a prejudice to the trade of England, and on this single instance, so ill-founded and supported, rice became an enumerated article.† How could our trade flourish, or our produce bring its full value, while restricted by a legislature so regardless of our interest, that a petty captain, to secure himself a cargo, could prevent our staple from being sent directly to a foreign market?

Union with Great Britain confined us to the consumption of her manufactures, and restrained us from supplying our wants by the improvement of those articles which the bounty of Heaven had bestowed on our country. So numerous were the inhabitants of some provinces, that they could not all find employment in cultivating the earth, and yet a single hat, manufactured in one colony, and exported for sale to another, forfeited both vessel and cargo. The same penalties were inflicted for transporting wool from one to another. Acts of Parliament have been made to prohibit the erection of slitting mills in America. Thus did British tyranny exert her power to make us a needy and dependent people, obliged to go to her market, and to buy at her prices, and all this at a time when, by her exclusive trade, she fixed her own prices on our commodities.

How widely different is our present situation? The glorious fourth of July, MDCCLXXVI, re-

pealed all these cruel restrictions, and holds forth generous prices, and public premiums, for our encouragement in the erection of all kinds of manufactures.

We are the first people in the world who have had it in their power to choose their own form of government. Constitutions were forced on all other nations by the will of their conquerors, or they were formed by accident, caprice, or the overbearing influence of prevailing parties or particular persons. But, happily for us, the bands of British government were dissolved at a time when no rank above that of freemen existed among us, and when we were in a capacity to choose for ourselves among the various forms of government, and to adopt that which best suited our country and people. Our deliberations on this occasion, were not directed by the overgrown authority of a conquering general, or the ambition of an aspiring nobility, but by the pole star of public good, inducing us to prefer those forms that would most effectually secure the greatest portion of political happiness to the greatest number of people. We had the example of all ages for our instruction, and many among us were well acquainted with the causes of prosperity and misery in other governments.

In times of public tranquillity, the mighty have been too apt to encroach on the rights of the many; but it is the great happiness of America, that her independent constitutions were agreed upon by common consent, at a time when her leading men needed the utmost support of the multitude, and therefore could have no other object in view, but the formation of such constitutions as would best suit the people at large, and unite them most heartily in repelling common dangers.

As the strength of a people consists in their numbers, our separate States, sensible of their weakness, were actually excited by self-interest to form such free governments, as would encourage the greatest influx of inhabitants. In this manner an emulation has virtually taken place in all the thirteen States, each contending with the others, who should form the freest constitution. Thus independence has been the fruitful parent of governments formed on equal principles, more favorable to the liberty and happiness of the governed, than any that have yet been recorded in the annals of history.

While we were dependent on Britain our freedom was out of the question; for what is a free state but one that is governed by its own will? What shadow of liberty then could we possess, when the single NO of a king, three thousand miles distant, was sufficient to repeal any of our laws, however useful and salutary, and when we were to be bound, in all cases whatsoever, by men in whose election we had no vote, who had an interest opposed to ours, and over whom we had no control? The wit of man could not possibly devise any mode that would unite the freedom of America with Britain's claim of unlimited supremacy. We

\* The tobacco colonies were also great losers by the British monopoly of trade. The duties on their staple, amounted to more than half the first cost. Tobacco, exported from Britain, sold in European markets for more than double the sum the American planter received for it. If it should become a custom in the United States to celebrate the anniversary of independence with an annual oration, it is hoped that some citizen of Virginia or Maryland, will place the selfish restrictions on the exportation of this valuable commodity, in a proper light.—*Author of the Oration.*

† See on Trade, page 21.

were therefore reduced to the alternative of liberty and independence, or slavery and union. We wisely chose to cut the Gordian knot, which tied old Britain to the new, and to assume our independent station among the empires of the world. Britain, had she honestly intended it, was incapable of governing us for the great purposes of government. Our great distance, and other local circumstances, made it impossible for her to be sufficiently acquainted with our situation and wants: But, admitting it was in her power, we had no reason to expect that she would hold the reins of government for any other end, but her own advantage. Human nature is too selfish, too ambitious, for us to expect, that one country will govern another, for any but interested purposes. To obtain the salutary ends of government, we must blend the interests of the people and their rulers; or else the former will infallibly be sacrificed to the latter. Hence, the absurdity of our expecting security, liberty, and safety, while we were subjects of a state a thousand leagues distant.

Connection with Britain involved us in all her quarrels; and such is the fluctuating state of her politics, that we could not long expect a political calm. In vain did the Atlantic ocean interpose; for, by our unnatural union, we were necessarily dragged into every war, which her pride or ambition might occasion. Besides, as she considered the colonies as her property, what was to hinder her from ceding any or all of them to the different European states? Thus, while we had no independent government of our own, we might have been the sport of various contending powers, and tossed about, like a football, from one to the other.

Our independence will naturally tend to fill our country with inhabitants. Where life, liberty, and property, are well secured, and where land is easily and cheaply obtained, the natural increase of people will much exceed all European calculations. Add to this, the inhabitants of the old world, becoming acquainted with our excellent forms of government, will emigrate by thousands. In their native lands, the hard-earned fruits of uninterrupted labor are scarcely equal to a scanty supply of their natural wants, and this pittance is held on a very precarious tenure: while our soil may be cheaply purchased, and will abundantly repay the toil of the husbandman, whose property no rapacious landlord dare invade. Happy America! whose extent of territory, westward, is sufficient to accommodate with land thousands and millions of the virtuous peasants, who now groan beneath tyranny and oppression in three quarters of the globe. Who would remain in Europe, a dependant on the will of an imperious landlord, when a few years industry can make him an independant American freeholder?

Such will be the fruits of our glorious revolution, that in a little time gay fields, adorned with the yellow robes of ripening harvest, will smile in the remotest depths of our western frontiers, where impassable forests now frown

over the uncultivated earth. The face of our interior country will be changed from a barren wilderness into the hospitable abodes of peace and plenty. Cities too will rise majestic to the view, on those very spots which are now howled over by savage beasts and more savage men.

The population of this country has been heretofore very rapid; but it is worthy of observation, that this has varied, more or less, in proportion to the degrees of liberty that were granted to the different provinces by their respective charters. Pennsylvania and New England, though inferior in soil, being blest originally with the most free forms of government, have outstripped others in the relative increase of their inhabitants. Hence, I infer, that as we are all now completely free and independent, we shall populate much faster than we ever have done, or ever would, while we were controlled by the jealous policy of an insignificant island.

We possess thousands and millions of acres, which we may sell out to new settlers, on terms very easy to them, and yet sufficient to defray the whole expense of the present war. When the quitrents, formerly paid to the king, shall be appropriated to the benefit of the independent States, they will fill our treasuries to so great a degree, that foreign nations, knowing that we abound in the sinews of war, will be afraid to provoke us. In a few years, when our finances are properly arranged, the stoppage of those sums which were formerly drained from us, to support the pride and extravagance of the British king, will be an ample provision, without taxes, for defraying the expense of our independent governments.

It is difficult to compute the number of advantages arising from our present glorious struggle; harder still, perhaps impossible, precisely to ascertain their extent. It has attracted the attention of all Europe to the nature of civil liberty, and the rights of the people. Our constitutions, pregnant with the seeds of liberty and happiness, have been translated into a variety of languages, and spread far and wide. Who can tell what great events, now concealed in the womb of time, may be brought into existence by the nations of the old world emulating our successful efforts in the cause of liberty? The thrones of tyranny and despotism will totter, when their subjects shall learn and know, by our example, that the happiness of the people is the end and object of all government. The wondering world has beheld the smiles of Heaven on the numerous sons of America, resolving to die or be free: Perhaps this noble example, like a wide-spreading conflagration, may catch from breast to breast, and extend from nation to nation, till tyranny and oppression are utterly extirpated from the face of the earth.\*

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\* Britain will eventually lose less by our independence, than is commonly supposed. The king and ministers may be cured of their lust of domination, and will be deprived of

The tyrants and landlords of the old world, who hold a great part of their fellow-men in bondage, because of their dependence for land, will be obliged to relax of their arbitrary treatment, when they find that America is an asylum for freemen from all quarters of the globe. They will be cautious of adding to the oppressions of their poor subjects and tenants, lest they should force them to abandon their country, for the enjoyment of the sweets of American liberty. In this view of the matter, I am confident that the cause of America is the cause of human nature, and that it will extend its influence to thousands who will never see it, and procure them a mitigation of the cruelties and oppressions imposed by their arbitrary taskmasters.

If such be the glorious consequences of independence, who can be so lost to every generous sentiment, as to wish to return under royal domination? Who would not rather count it an honor to stand among the foremost, in doing and suffering in a cause so intimately connected with the happiness of human nature? Away with all the peevish complaints of the hardness of the times, and the weight of the taxes. The prize for which we contend, would be cheaply purchased with double the expense of blood, treasure, and difficulty, it will ever cost us.

Our independent constitutions, formed on the justest principles, promise fair to give the most perfect protection to life, liberty, and property, equally to the poor and the rich. As at the conflagration of Corinth, the various melted metals running together, formed a new one, called Corinthian brass, which was superior to any of its component parts: in like manner, perhaps, it is the will of Heaven, that a new empire should be here formed, of the different nations of the old world, which will rise superior to all that have gone before it, and extend human happiness to its utmost possible limits. None can tell to what perfection the arts of government may be brought. May we not therefore expect great things from the patriots of this generation, jointly co-operating to make the new-born Republic of America as complete as possible? Is it not to be hoped, that human nature will here receive her most finished touches? That the arts and sciences will be extended and improved? That religion, learning, and liberty, will be diffused over this con-

tinental? and in short, that the American editions of the human mind will be more perfect than any that have yet appeared? Great things have been achieved in the infancy of states; and the ardor of a new people, rising to empire and renown, with prospects that tend to elevate the human soul, encourages these flattering expectations.

Should any puny politician object, that all these prospects are visionary, till we are certain of independence, I reply, that we have been in possession of it for two years, and are daily more able to support it, and our enemies less able to overset it. When we first dared to contend with Britain, we were a loose, disjointed people, under no other government but that of a well regulated mob. If, in these circumstances, we were able to defend ourselves, what may we not expect, when we can draw forth our whole strength, in a regular constitutional manner? If the maiden courage of our new levies has successfully withstood the well-trained bands of our enemies, can we distrust, when three campaigns have made them equal in discipline with those with whom they are to contend? Such is the situation of Britain, that were we only able to keep up the appearance of an army, she could not afford to protract the war. But instead of this our troops are more numerous, better disciplined, clothed, and armed, than they ever were. The most timid may dismiss all their doubts, since Louis XVI. of France, that illustrious protector of the rights of human nature, with a magnanimity worthy of himself, has guaranteed to us our independence. If Britain could not subdue America, when she stood single and alone, how abortive must all her attempts prove, when we are aided by the power of the greatest European monarch?

The special interposition of Providence in our behalf, makes it impious to disbelieve the final establishment of our heaven-protected independence. Can any one seriously review the beginning, progress, and present state of the war, and not see indisputable evidence of an overruling influence on the minds of men, preparing the way for the accomplishment of this great event?

As all the tops of corn, in a waving field, are inclined in one direction by a gust of wind, in like manner the Governor of the World has given one and the same universal bent of inclination to the whole body of our people. Is it a work of man, that thirteen States, frequently quarrelling about boundaries, clashing in interests, differing in policy, manners, customs, forms of government, and religion; scattered over an extensive continent, under the influence of a variety of local prejudices, jealousies and aversions, should all harmoniously agree, as if one mighty mind inspired the whole?

Our enemies seemed confident of the impossibility of our union; our friends doubted it; and all indifferent persons, who judged of things present by what has heretofore happened, considered the expectation thereof as romantic.

influence and the means of corruption. While she had a monopoly of our trade, it encouraged idleness and extravagance in her manufacturers; because they were sure of a market for their goods, though dear and ill-made. But, as independence will bestow our commerce on those who most deserve it, this will be the means of introducing frugality and industry among her laboring poor. Our population will be so much the more rapid for our free governments, that, in my humble opinion, that part of our trade which will fall to the share of Great Britain, if she has the wisdom to conclude a speedy peace, will be more to her advantage than a monopoly of the whole of it, if we had remained subjects.—  
*Author of the Oration.*

but He, who sitteth at the helm of the universe, and who boweth the hearts of a whole nation as the heart of one man, for the accomplishment of his own purposes, has effected that, which to human wisdom and foresight seemed impossible. A review of the history of America, from its first discovery to the present day, forces upon us a belief, that greater blessings are reserved for this continent, than she ever could have possessed whilst lying low at the foot of a European island.

It has never yet been fairly tried how far the equal principles of republican government would secure the happiness of the governed. The ancients, unacquainted with the present mode of taking the sense of the people by representatives, were too apt, in their public meetings, to run into disorder and confusion. The distinction of *patricians* and *plebeians*, laid the foundation of perpetual discord in the Roman commonwealth. If the free states of Greece had been under the control of a common superintending power, similar to our continental Congress,\* they could have peaceably decided their disputes, and probably would have preserved their freedom and importance to the present day. Happily for us, warned by experience, we have guarded against all these evils. No artificial distinction of ranks has been suffered to take place among us. We can peaceably convene a State in one small assembly of deputies, representing the whole in an equal proportion. All disputes between the different States, and all continental concerns, are to be managed by a Congress of representatives from each. What a security for liberty, for union, for every species of political happiness! Small states are weak, and incapable of defence; large ones are unwieldy, greatly

abridge natural liberty, and their general laws, from a variety of clashing interests, must frequently bear hard on many individuals: But our confederation will give us the strength and protection of a power equal to that of the greatest; at the same time, that, in all our internal concerns, we have the freedom of small, independent commonwealths. We are in possession of constitutions that contain in them the excellencies of all forms of government, free from the inconveniences of each; and in one word, we bid fair to be the happiest and freest people in the world for ages yet to come.

When I anticipate in imagination the future glory of my country, and the illustrious figure it will soon make on the theatre of the world, my heart distends with generous pride for being an American. What a substratum for empire! compared with which, the foundation of the Macedonian, the Roman, and the British, sink into insignificance. Some of our large States have territory superior to the island of Great Britain, whilst the whole together are little inferior to Europe itself. Our independence will people this extent of country with freemen, and will stimulate the innumerable inhabitants thereof, by every motive, to perfect the acts of government, and to extend human happiness.

I congratulate you on our glorious prospects. Having for three long years weathered the storms of adversity, we are at length arrived in view of the calm haven of peace and security. We have laid the foundations of a new empire, which promises to enlarge itself to vast dimensions, and to give happiness to a great continent. It is now our turn to figure on the face of the earth, and in the annals of the world. The arts and sciences are planted among us, and, fostered by the auspicious influence of equal governments, are growing up to maturity, while truth and freedom flourish by their sides. Liberty, both civil and religious, in her noontide blaze, shines forth with unclouded lustre on all ranks and denominations of men.

Ever since the flood, true religion, literature, arts, empire and riches, have taken a slow and gradual course from east to west, and are now about fixing their long and favorite abode in this new western world. Our sun of political happiness is already risen, and hath lifted its head over the mountains, illuminating our hemisphere with liberty, light, and polished life. Our independence will redeem one quarter of the globe from tyranny and oppression, and consecrate it to the chosen seat of truth, justice, freedom, learning and religion. We are laying the foundation of happiness for countless millions. Generations yet unborn will bless us for the blood-bought inheritance we are about to bequeath them. Oh happy times! Oh glorious days! Oh kind, indulgent, bountiful Providence, that we live in this highly favored period, and have the honor of helping forward these great events, and of suffering in a cause of such infinite importance!

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\* Their council of Amphictyones in some things resembled our Congress; but their powers were too limited. This suggests a hint, that a confederation of the United States, on principles that vest the Congress with ample powers, is most likely to perpetuate our republican governments and internal tranquillity. The union of independent commonwealths, under one common head, is an application of the social compact to states, and requires powers proportionably enlarged. Treason, in our governments, puts on a new aspect, and may be committed by a State as well as an individual; and therefore ought to be clearly defined, and carefully guarded against.

To give permanency to our confederation on republican principles, the following regulations seem expedient: That Congress should have a power to limit or divide large States, and to erect new ones: To dispose of the money arising from quitrents and vacant lands, at least till all the expenses of the war are sunk: To establish a general intercourse between the States, by assigning to each, one or more manufacturing, with which it should furnish the rest; so as to create a reciprocal dependence of each upon the whole: To erect a great continental university, where gentlemen from all the States may form an acquaintance, receive the finishing touches of education, and be inspired with continental liberality of mind, superior to local prejudices, and favorable to a confederated union.—*Author of the Oration.*

## LOUISIANA.\*

Within the limits of the ceded territory, we know of more than twenty independent tribes of Indians. As long as powerful nations of Europe had access to these untutored savages, the peace of our frontier settlements was exposed to a variety of contingencies. In the two last wars in which this country was involved with France and England, the blood of our inhabitants shed by savage hands flowed in a thousand streams. In every period of American history, the nations of Europe, regardless of morality and religion, have always availed themselves of the aborigines in destroying each other, and also the colonies of rival nations.

In gaining the affections of the savages the French were pre-eminent. Figure to yourselves what would have been the situation of our frontier settlements on the western waters, in case of a war with France, while her emissaries had the numerous tribes of Indians in Louisiana firmly attached to her interests, and ready when called upon to make war upon our dispersed and defenceless inhabitants.

These Indians are now all our own—included within our limits, and so far dependent on us, that no other nation can interfere with them. The cession of Louisiana has wrested the scalping knife and tomahawk from their hands, and laid the foundations of perpetual peace, by giving us every desirable opportunity for introducing among them the blessings of civil and social life. They are now thrown on our humanity and generosity.

Mysterious Providence! We, the people of the United States, who, less than thirty years

ago, were the subjects of the British king, are now the independent proprietors of this soil; and that portion of it which we originally possessed, is more than doubled by a recent cession of territory, in which are numerous tribes of Indians, whose ancestors owned this whole country from time immemorial, before any one of ours had set his foot on American ground. Trusting in the virtue of my countrymen, and warranted by the present and past exertions of our rulers, I am confident that these hapless natives will have no cause to regret, but abundant reason to rejoice in the change which has taken place.

The voice of every good man should be raised in favor of our red brethren. The common Father of them, and of us, calls upon us to impart to them the superior blessings which we enjoy. The competition of rival nations, bidding against each other for their friendship, is now no more. We have the whole field to ourselves, and a glorious field it is: in which we may, and I trust will, sow the seeds of knowledge, of virtue, of useful arts, of civilization, and religion: and that these will grow up and flourish, till they yield a plentiful harvest of human happiness. To transform savage warriors to peaceful farmers—to convert their tomahawks and scalping-knives into ploughshares and pruning-hooks—to turn them from the worship of evil spirits, to the worship of the true God—from the absurd rites of Pagan idolatry to the mild principles and practical virtues of Christianity, is a godlike work. For the execution of it, the extension of our boundaries gives us facilities we never had before, and which, I trust, will be improved for the best of purposes.

\* This extract is taken from Doctor Ramsay's *Oration on the cession of Louisiana to the United States*.







*James Adams*





## SAMUEL ADAMS.

SAMUEL ADAMS was born in Boston, Massachusetts, from an ancient and respectable parentage of the first settlers of New England, on the twenty-seventh day of September, 1722. The record of his early days is lost. Having passed through the primary branches at Master Lovell's school, he entered as a student at Harvard College, in the autumn of the year 1736. The time there allowed to lay the foundation of a future usefulness, was not lost to him or to his country. In accordance with the wishes of his parents, he decided to prepare himself for the duties of the Christian ministry, and to that end he directed his energies. He obtained the honors of his Alma Mater, not because he had been under her guardianship the usual term, but for his assiduous attention to literary acquirements, that rendered him worthy of them. On receiving his second degree, in conformity with the usages of the college, which retained many forms of the English Universities, he proposed as his thesis, and defended the affirmative of the question, *Whether it be lawful to resist the supreme magistrate, if the commonwealth cannot otherwise be preserved?* Thus early had his mind taken its bent, and formed that system of political opinions to which he uniformly and zealously adhered throughout life, and which he never for a moment hesitated to reduce to practice. Nor was this the only instance of his youthful devotion to the welfare of his fellow-men;—out of the stipulated sum allowed him by his father while in college, he saved a sufficiency to publish his masterly defence of "Englishmen's Rights."

Zealous in the support of religion—the church government and discipline of the early Independents of New England, and warmly attached to the doctrines they inculcated, he was led to a veneration of the champions of his peculiar creed, and predisposed to the adoption of their political as well as religious opinions. The quaint writings of Colman, of the elder John Adams, and of the younger Mather, charmed his senses. Of the latter, "upon whose childhood was heaped a mountain of learning and theology," and who went about "smelling out the odoriferous flowers of fancy, those jerks of the imagination"—he expressed the highest admiration.

In such an atmosphere, surrounded by such examples, he pursued with an affectionate ardor the study of theology, and only resigned that profession to enter into the service of Freedom. Thus he became filled with enthusiastic admiration of the sturdy republicanism, the uncompromising principle, and the severe simplicity of manners which characterized the English Puritans of the reigns of James and Charles the First. Of these, and of his ancestors who landed at Plymouth, he never spake, but with reverence and respect. Their sufferings awakened a generous sympathy in his breast, and his holy gratitude for the "goodly heritage" they had bequeathed him and his posterity, never abated.

The period at which Mr. Adams began to take an interest in the public affairs, the provincial governments were continually agitated by contests between their governors and other officers, who were appointed by the Crown, and the Assemblies, which were the immediate representatives of the colonists. There could be no question in his mind, as to the side which he should embrace. The situation of his country in the incipient stages of the Revolution, opened a wide and important field for the display of his singular genius and extensive capacity. The

claim of Great Britain "to legislate for the colonies in all cases whatever," drew in its train consequences of vast importance. Without such an authority, it would be difficult to maintain the connection of a parent state, with provinces,—with the exercise of it, the colonists were depressed below the grade of British subjects, and reduced to a state of slavery.

There were very few whose minds could comprehend the important distinctions which were then agitated, or whose reasoning could discern the approaching events of that controversy. Mr. Adams, buoyed up by a sense of the justice and righteousness of the colonists' demands, stood forth first in their defence, and heroically won his title—*The Father of the Revolution*. In 1764, he was elected to prepare the instructions of the town of Boston to their representatives in the General Assembly. The document is now in existence, and contains the first public denial of the right of the British Parliament to tax the colonies, a denial of parliamentary supremacy, and a direct suggestion of the necessity of Union.

Mr. Adams seems to have been peculiarly formed for the eventful period of his life. His mind was singularly powerful in tracing the result of political principles. The firmness of his heart never failed to support his efforts, whenever he was convinced of the rectitude and propriety of the objects he pursued. He pressed his measures with ardor, because they were founded on calculations tending to the glory and independence of his country. His courage derided the bars thrown in the way of his career, while the sagacity of his mind pierced the clouds in which sophistry involved the subject before him. By this he was enabled to explain, in the most convincing manner, the depression of the colonies, unless a firm and noble stand was then made against the King and the Parliament. He met oppositions and threatenings with an intrepid firmness peculiar to himself; and, with an eye of careless indifference, looked upon the dangers that surrounded him, as mere incidents in the progress of great events.

At the time of the Stamp Act, Mr. Adams became a conspicuous favorite with the people, and a leader in all the popular proceedings of the day. Warmly engaged, both as a declaimer in town meetings, and as a writer in the public prints, his private affairs were neglected, and he became embarrassed with debts. His poverty attracted the attention of the British adherents, and he was approached with presents and bribes: but he could not be won from the cause of Liberty. "Such is the obstinacy and inflexibility of Adams," said a letter to England, "that he never can be conciliated by any office or gift whatever." Such honesty of purpose was looked upon in Great Britain with ludicrous incredulity, probably occasioned by a confusion of ideas at the anomaly of such a disposition, compared with the personal and daily experience in the British Court.

Mr. Adams was chosen one of the representatives from Boston to the General Court or Legislature of Massachusetts, in 1765. Here he remained until his election to the Continental Congress, being annually re-elected for nine years, a period which includes an eventful and interesting portion of the history of American liberty, during the whole of which he was remarkable as well for his political and parliamentary talents, as for his zeal in opposition to the claims, the acts, and the menaces of the royal government. While a member of this body, he was continually employed on committees to draft reports, protests, and other public papers, in which employment he evinced great rapidity and correctness of composition.

In 1768, after the death of Charles Townsend, Lord North entered the service of the king. Soon the effects of his administration were felt throughout the American colonies. New acts of taxation were established, and royal collectors sent from England to enforce them. Public feeling seemed unprepared for action, and averse to a rupture. The Massachusetts Assembly, adopting the sentiments of Samuel Adams, approached the king with a humble petition. To him they recounted the story of their wrongs, and besought him to alleviate them. Among themselves, they advocated the policy of union. "Let us all be of one heart and one mind," said Adams. "Let us call on our sister colonies to join with us. Should our righteous opposition to slavery be named rebellion, let us pursue duty with firmness, and leave the event to heaven." The same year Mr. Adams prepared the letter from the Assembly of Massachusetts to their agent in England, and also the celebrated Circular Letter, addressed to the Speakers of the several Houses of Assembly in the other Colonies. The last production is one of the most

important of all American State Papers, as the embodiment of historical data, and indicative of the spirit and temper of the times.\*

In the deliberative bodies of his native State, where the foundation of the American Revolution was formed, where the principles and systems of government on which the security and happiness of mankind were established, Samuel Adams's manly eloquence was never resisted with success. His opponents were obliged to yield in silence, only hoping for a change by the means of an army more favorable to their views. His rhetoric was a torrent of figurative language—still, an impressive, sedate strain of reasoning, which could never fail to awaken the interested, or to convince the unprejudiced hearer. His pen was no less powerful than his tongue. A mind well stocked with the sentiments of a Sidney, a Locke, and other great and noble men who had contended against monarchical and ecclesiastical tyranny; with an education which had given it the entire possession of all the principal systems, and abuses of the ancient Grecian and Roman republics, as well as of the despotisms of the world, was capable of carrying conviction to the hearts of all who had not been bribed against their own freedom, or who had not suffered themselves to be betrayed by the allurements of avarice and ambition, or by the impression of fear.

One brief specimen of his eloquence at this period, has been preserved by tradition. A town meeting of Boston had been called at the Old South Church, in consequence of some new aggression upon the rights of the people. The different orators of the patriot party had in turn addressed the meeting, loud in complaint and accusation, but guarded and cautious on every point which might look like an approach towards treasonable expressions, or direct exhortations to resistance. Adams placed himself in the pulpit, and sat quietly listening to all their harangues; at length he rose and made a few remarks, which he closed with the following pithy apologue:

"A Grecian philosopher who was lying asleep on the grass, was suddenly roused by the bite of some animal on the palm of his hand. He closed his hand quickly as he awoke, and found that he had caught in it a small field mouse. As he was examining the little animal which had dared to attack him, it bit him unexpectedly a second time: he dropped it, and it escaped. Now, fellow-citizens, what think you was the reflection which this trifling circumstance gave birth to, in the mind of the philosopher. It was this: That there is no animal, however weak and contemptible, which cannot defend its own liberty, if it will only *fight* for it."

Amidst the cares and anxieties incident to his position, Mr. Adams maintained a cheerful demeanor, and the fullest confidence in the ultimate success of his cause. One morning, when the spirits of the patriots were almost broken with despair, he was accosted by Mather Byles, the celebrated tory clergyman of Boston, with the remark, "Come, friend Samuel, let us relinquish republican phantoms, and attend to our fields." "Yes," said Adams, "you attend to the planting of liberty, and I will grub up the taxes. Thus we shall have pleasant places."

The increasing popularity of Mr. Adams, in 1773, rendered it every day more desirable to the royal party that he should be detached from the popular cause, and the efforts to gain him to the side of the ministry were renewed. Governor Gage now thought he would try the experiment. For this purpose he sent a confidential and verbal message by a colonel of his army, who waited on Mr. Adams, and stated the object of his visit. He remarked that an adjustment of the dispute which existed between England and her colonies was much desired; that he was authorized to assure him of reward from the government, if he would cease in his opposition, and that it was the advice of Governor Gage to him, not to incur the further displeasure of his majesty, for his conduct thus far had rendered him liable to the penalties for treason.

Mr. Adams listened with apparent interest to this recital. He asked the British colonel if he would deliver his reply as it should be given, and required his word of honor that it would. Then, rising from his chair, in a tone of indignant defiance he replied, "I trust I have long since

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\* The original drafts, in the autograph of Samuel Adams, are now in the possession of the Honorable George Bancroft, to whom I am indebted for the opportunity to examine Mr. Adams' private papers and manuscripts.

made my peace with the King of kings. No personal consideration shall induce me to abandon the righteous cause of my country. Tell Governor Gage it is the advice of Samuel Adams to him, no longer to insult the feelings of an exasperated people." Thus, with a full sense of his own perilous situation, marked out as an object of ministerial vengeance, laboring under severe pecuniary embarrassment, but fearless of personal consequences, he steadily pursued the great object of his soul, the liberty of the people.

In 1774 Mr. Adams was elected to the General Congress, first suggested by him, which met at Philadelphia, and the same year was chosen Secretary of the State of Massachusetts, which office he discharged by deputy, while attending his duties in Congress.

Exasperated at the refusal of his promises and advances, General Gage issued his celebrated proclamation of June, 1775, in which he offered and promised his majesty's most gracious pardon to all persons who would lay down their arms and return to the duties of peaceable subjects, excepting only from the benefit of such pardon "Samuel Adams and John Hancock, whose offences were of too flagitious a nature to admit of any other consideration than that of condign punishment." Justly deeming this as the token of despair in a deceived and weak administration, Mr. Adams held the measure in the profoundest contempt, and continued his exertions to prepare his country for the last and most solemn resort which he saw near at hand.

His course in reference to the Declaration of Independence is well known. Firm, dignified, never faltering, and with a steady purpose, he labored for its consummation. Joined hand in hand with Chase, Franklin, John Adams, and Jefferson, he gave to the American colonies a place among the nations of the earth, on the broad and deep foundation of independent sovereignty. Of his splendid rhetorical efforts, but one has come down to us. That is included in the present collection.

The Declaration of Independence was expected but by few—new in idea to a great many, and considered by numbers in every State as a rash and daring measure. The American army was then miserably fed, badly armed, wretchedly clothed, and poorly paid. Paper currency, their only resource, was in rapid depreciation, and there appeared to be nothing to depend on but the magnanimity of the people and the justness of their cause.

At this crisis commissioners from England landed, with offerings of peace and reconciliation. They were surrounded by a well-disciplined and powerful army, supported by a numerous fleet, and filled with the anticipations of conquest. The Congress, with a dignity well worthy of an older and more powerful nation, delegated to Dr. Franklin, John Adams, and Edward Rutledge, the authority of a conference with the royal commissioners. They listened to their overtures, while they reasoned on the necessity of a recession from independence, and then gravely replied, in accordance with their instructions: "The United States have become an independent nation; they have no voice but that of a sovereign power, and there can be no discussion of any propositions which do not acknowledge that sovereignty." These instructions were issued on the motion of Samuel Adams.

At this important moment the patriot army was retreating before the English, in every part of the country. Congress was forced to fly from Philadelphia, and find a shelter where they could mature their counsels and direct the course of action. Under these exigencies Mr. Adams appeared calm and undismayed. No clouds of despair spread over his countenance. Noticing the despondence of his fellow-members, he said, "I hope you do not despair of our final success." It was answered that the chance was desperate. "If this be our language," said he, "it is so, indeed. If we wear long faces they will become fashionable. The people take their tone from ours, and if we falter, can it be expected that they will march onward? Let us banish such feelings, and show a spirit that will keep alive the confidence of the people. Better tidings will soon arrive. Our cause is just, and we shall never be abandoned by heaven while we show ourselves worthy of its aid and protection." His words were prophetic. Soon after the news arrived of the triumph at Bennington and the glory of Saratoga's field. These gave a brightness to their prospects, and lent confidence to their hopes. It was a favorite remark with Mr. Adams, in the declining years of his life, that this Congress, the Congress of 1777, "was the *smallest* but *truest* Congress we ever had."



The treaty of peace with England in 1783, acknowledging the sovereignty of the United States, accomplished the wishes of Mr. Adams. He was then in a situation to contemplate his own past conduct with inexpressible satisfaction. His penetrating eye had long discerned, and his patriotic soul had long anticipated the æme of glory to which his nation would arise. Convinced that the connection with the mother country could not be continued upon the plan adopted by the ministry, his exertions had all tended to the separation and independence now so gloriously achieved.

In the year 1794, on the death of Governor Hancock, Mr. Adams was, by a general vote, elected Governor of the commonwealth of Massachusetts. Here he continued until 1797, when the increasing infirmities of more than threescore and ten years led him to seek a voluntary state of retirement.

In the advanced age of his life he delighted in a recapitulation of the scenes of the Revolution. In this, as in other circumstances, he resembled the Earl of Chatham, who, while he was an old man, became impatient of all subjects which did not relate to the French war, in which his administration had added new gems to the diadem of his sovereign. A recollection of the dangerous and difficult circumstances which had been encountered by the courage and subdued by the genius of his country, alleviated the burden of his declining years, and the light of those memories shone about him to the end. He died on the second of October, 1803, in the eighty-second year of his age.

Mr. Adams, through the whole course of his life, was a zealous professor and an exemplary performer of the duties enjoined by the Christian religion. He viewed it not merely as a system of morals, but as a mysterious plan to exhibit the benevolence of the Almighty to his rational offspring on the earth, as the wise and benignant method to preserve an intercourse between earth and heaven. On this system he confided in the mercy of his Creator, and in this he had consolation while he saw his dissolution approaching.

The face of Mr. Adams is known from the portrait by Copley. "He was of common size," says Sullivan, in his *Familiar Letters on Public Characters*, "of muscular form, light blue eyes, fair complexion, and erect in person. He wore a tie wig, cocked hat, and red cloak. His manner was very serious. At the close of his life, and probably from early times, he had a tremulous motion of the head, which probably added to the solemnity of his eloquence, as this was, in some measure, associated with his voice."

According to the ordinary custom of his country, Mr. Adams married early in life. Possessed of no hereditary fortune, and without a profession, he maintained his family chiefly by the salaries and emoluments of public office. Throughout the greater part of his life he was poor, until at a late period, in consequence of the death of his only son, he acquired a competency. His domestic economy, though plain, was by no means sordid, and his whole system of life exhibited a fair specimen of the genuine old-fashioned New England man. "He belonged to that class of men," said Edward Everett, "to whom the cause of civil and religious liberty, on both sides of the Atlantic, is mainly indebted for the great progress which it has made for the last two hundred years; and when the Declaration of Independence was signed, that dispensation might be considered as brought to a close. At a time when the new order of things was inducing laxity of manners and a departure from the ancient strictness, Samuel Adams clung with greater tenacity to the wholesome discipline of the fathers. His only relaxation from business and the cares of life was in the indulgence of a taste for sacred music, for which he was qualified by the possession of a most angelic voice and a soul solemnly impressed with religious sentiment. Resistance to oppression was his vocation." \*

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\* See Sullivan's biographical sketch of Mr. Adams: Article in the *Analectic: Biography of the Signers: Thatcher's Sermon*: Polyanthos: Eliot's *Biographical Dictionary*, and Bancroft's *History of the United States*, vol. 6, pp. 119-129.

## AMERICAN INDEPENDENCE.

This oration was delivered by Samuel Adams, in Philadelphia, on the first of August, 1776.\*

COUNTRYMEN AND BRETHREN: I would gladly have declined an honor, to which I find myself unequal. I have not the calmness and impartiality which the infinite importance of this occasion demands. I will not deny the charge of my enemies, that resentment for the accumulated injuries of our country, and an ardor for her glory, rising to enthusiasm, may deprive me of that accuracy of judgment and expression which men of cooler passions may possess. Let me beseech you then, to hear me with caution, to examine without prejudice, and to correct the mistakes into which I may be hurried by my zeal.

Truth loves an appeal to the common sense of mankind. Your unperverted understandings can best determine on subjects of a practical nature. The positions and plans which are said to be above the comprehension of the multitude may be always suspected to be visionary and fruitless. He who made all men hath made the truths necessary to human happiness obvious to all.

Our forefathers threw off the yoke of Popery in religion; for you is reserved the honor of leveling the popery of politics. They opened the Bible to all, and maintained the capacity of every man to judge for himself in religion. Are we sufficient for the comprehension of the sublimest spiritual truths, and unequal to material and temporal ones? Heaven hath trusted us with the management of things for eternity, and man denies us ability to judge of the present, or to know from our feelings the experience that will make us happy. "You can discern," say they, "objects distant and remote, but cannot perceive those within your grasp. Let us have the distribution of present goods, and cut out and manage as you please the interests of futurity." This day, I trust, the reign of political protestanism will commence. We have explored the temple of royalty, and found that the idol we have bowed down to, has eyes which see not, ears that hear not our prayers, and a heart like the nether

millstone.\* We have this day restored the Sovereign, to whom alone men ought to be obedient. He reigns in Heaven, and with a propitious eye beholds his subjects assuming that freedom of thought, and dignity of self-direction which he bestowed on them. From the rising to the setting sun, may His kingdom come.

Having been a slave to the influence of opinions early acquired, and distinctions generally received, I am ever inclined not to despise but pity those who are yet in darkness. But to the eye of reason what can be more clear, than that all men have an equal right to happiness? Nature made no other distinction than that of higher or lower degrees of power of mind and body. But what mysterious distribution of character has the craft of statesmen, more fatal than priestcraft, introduced?

According to their doctrine, the offspring of perhaps the lewd embraces of a successful invader, shall, from generation to generation, arrogate the right of lavishing on their pleasures a proportion of the fruits of the earth, more than sufficient to supply the wants of thousands of their fellow-creatures; claim authority to manage them like beasts of burthen, and without superior industry, capacity, or virtue, nay, though disgraceful to humanity by their ignorance, intemperance, and brutality, shall be deemed best calculated to frame laws, and to consult for the welfare of society.

Were the talents and virtues, which Heaven has bestowed on men, given merely to make them more obedient drudges, to be sacrificed to the follies and ambition of a few? or, were not the noble gifts so equally dispensed with a divine purpose and law, that they should as nearly as possible be equally exerted, and the blessings of Providence be equally enjoyed by

\* The homage that is paid in some countries to monarchs and their favorites, is disgraceful to humanity. Should one of my honest countrymen be suddenly conveyed to an European court, he would fancy himself admitted into some heathen temple. The policy of courtiers seems to have been to render their sovereigns as dependent on themselves as possible, by accustoming them to hear with their ears, see with their eyes, and perform the most common offices with their assistance, and under their direction; like the cunning of priests who labor to place themselves between the Deity and mankind, and to make themselves the only channels of communication between earth and Heaven. Such monarchs resemble Rabelais's Queen, who never chew'd any thing; not that her teeth were not good and strong, and that her food did not require mastication, but such was the indispensable ceremonial of her court, her officers took her meat and chew'd it nobly, having their mouths line'd with crimson satin, and their teeth cased over with fine white ivory, after this they passed it into her stomach by a golden pipe. \* \*

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Rabelais. lib. 5

\* An oration delivered at the State House, in Philadelphia, to a very numerous audience, on Thursday, the first of August, 1776, by Samuel Adams, member of the \*\*\*\*\* the General Congress of the \*\*\*\*\* of America.

Per damna, per casus, ab ipso  
Ducit opes, animisque ferro.  
Hon.

Oh! save my Country, Heaven! shall be my last.  
For.

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No. 4, Ludgate Hill, M.DCC.LXXXVI.

all? Away then, with those absurd systems, which, to gratify the pride of a few, debase the greatest part of our species below the order of men. What an affront to the King of the universe, to maintain that the happiness of a monster, sunk in debauchery and spreading desolation and murder among men, of a Caligula, a Nero, or a Charles, is more precious in his sight than that of millions of his suppliant creatures, who do justice, love mercy, and walk humbly with their God! No! in the judgment of Heaven there is no other superiority among men, than a superiority in wisdom and virtue. And can we have a safer model in forming ours? The Deity then has not given any order or family of men authority over others, and if any men have given it, they only could give it for themselves. Our forefathers, 'tis said, consented to be subject to the laws of Great Britain. I will not, at present, dispute it, nor mark out the limits and conditions of their submission; but will it be denied that they contracted to pay obedience, and to be under the control of Great Britain, because it appeared to them most beneficial in their then present circumstances and situations? We, my countrymen, have the same right to consult and provide for our happiness, which they had to promote theirs. If they had a view to posterity in their contracts, it must have been to advance the felicity of their descendants. If they erred in their expectations and prospects, we can never be condemned for a conduct which they would have recommended had they foreseen our present condition.

Ye darkeners of counsel, who would make the property, lives, and religion of millions, depend on the evasive interpretations of musty parchments; who would send us to antiquated charters, of uncertain and contradictory meaning, to prove that the present generation are not bound to be victims to cruel and unforgiving despotism, tell us whether our pious and generous ancestors bequeathed to us the miserable privilege of having the rewards of our honest industry, the fruits of those fields which they purchased and bled for, wrested from us at the will of men over whom we have no check? Did they contract for us that, with folded arms, we should expect that justice and mercy from brutal and inflamed invaders which have been denied to our supplications at the foot of the throne? Were we to hear our character as a people ridiculed with indifference? Did they promise for us that our meekness and patience should be insulted; our coasts harassed; our towns demolished and plundered, and our wives and offspring exposed to nakedness, hunger and death, without our feeling the resentment of men, and exerting those powers of self-preservation which God has given us? No man had once a greater veneration for Englishmen than I entertained. They were dear to me as branches of the same parental trunk, and partakers of the same religion and laws; I still view with respect the remains of the constitu-

tion as I would a lifeless body, which had once been animated by a great and heroic soul. But when I am roused by the din of arms; when I behold legions of foreign assassins, paid by Englishmen to imbrue their hands in our blood; when I tread over the uncoffined bones of my countrymen, neighbors and friends; when I see the locks of a venerable father torn by savage hands, and a feeble mother, clasping her infants to her bosom, and on her knees imploring their lives from her own slaves, whom Englishmen have allured to treachery and murder; when I behold my country, once the seat of industry, peace, and plenty, changed by Englishmen to a theatre of blood and misery, Heaven forgive me, if I cannot root out those passions which it has implanted in my bosom, and detest submission to a people who have either ceased to be human, or have not virtue enough to feel their own wretchedness and servitude.

Men who content themselves with the semblance of truth, and a display of words, talk much of our obligations to Great Britain for protection! Had she a single eye to our advantage? A nation of shopkeepers\* are very seldom so disinterested. Let us not be so amused with words; the extension of her commerce was her object. When she defended our coasts, she fought for her customers, and convoyed our ships loaded with wealth, which we had acquired for her by our industry. She has treated us as beasts of burthen, whom the lordly masters cherish that they may carry a greater load. Let us inquire also against whom she has protected us? Against her own enemies with whom we had no quarrel, or only on her account, and against whom we always readily exerted our wealth and strength when they were required. Were these colonies backward in giving assistance to Great Britain, when they were called upon in 1739, to aid the expedition against Carthage? They at that time sent 3000 men to join the British army, although the war commenced without their consent. But the last war, 'tis said, was purely American. This is a vulgar error, which, like many others, has gained credit by being confidently repeated. The dispute between the Courts of Great Britain and France, related to the limits of Canada and Nova Scotia. The controverted territory was not claimed by any in the colonies, but by the Crown of Great Britain. It was therefore their own quarrel. The infringement of a right which England had, by the treaty of Utrecht, of trading in the Indian country of Ohio, was another cause of the war. The French seized large quantities

\* This oration was translated into French and published at Paris, from which it may be presumed Bonaparte obtained this well-known expression. A copy of the French translation, I am informed, is in the possession of William Vincent Wells, of Boston, Massachusetts, a great-grandson of Samuel Adams, whose life he is now preparing for publication. Ed.

of British manufacture, and took possession of a fort which a company of British merchants and factors had erected for the security of their commerce. The war was therefore waged in defence of lands claimed by the Crown, and for the protection of British property. The French at that time had no quarrel with America; and, as appears by letters sent from their commander-in-chief, to some of the colonies, wished to remain in peace with us. The part therefore which we then took, and the miseries to which we exposed ourselves, ought to be charged to our affection for Britain. These colonies granted more than their proportion to the support of the war. They raised, clothed, and maintained, nearly 25,000 men, and so sensible were the people of England of our great exertions, that a message was annually sent to the House of Commons purporting: "That his majesty, being highly satisfied of the zeal and vigor with which his faithful subjects in North America had exerted themselves in defence of his majesty's just rights and possessions, recommended it to the House, to take the same into consideration, and enable him to give them a proper compensation."

But what purpose can arguments of this kind answer? Did the protection we received annul our rights as men, and lay us under an obligation of being miserable?

Who among you, my countrymen, that is a father, would claim authority to make your child a slave because you had nourished him in his infancy?

'Tis a strange species of generosity which requires a return infinitely more valuable than any thing it could have bestowed; that demands as a reward for a defence of our property, a surrender of those inestimable privileges, to the arbitrary will of vindictive tyrants, which alone give value to that very property.

Political right and public happiness are different words for the same idea. They who wander into metaphysical labyrinths, or have recourse to original contracts, to determine the rights of men, either impose on themselves or mean to delude others. Public utility is the only certain criterion. It is a test which brings disputes to a speedy decision, and makes it appeal to the feelings of mankind. The force of truth has obliged men to use arguments drawn from this principle who were combating it, in practice and speculation. The advocates for a despotic government, and non-resistance to the magistrate, employ reasons in favor of their systems drawn from a consideration of their tendency to promote public happiness.

The Author of Nature directs all his operations to the production of the greatest good, and has made human virtue to consist in a disposition and conduct which tends to the common felicity of his creatures. An abridgement of the natural freedom of man, by the institution of political societies, is vindicable only on this foot. How absurd, then, is it to draw ar-

guments from the nature of civil society for the annihilation of those very ends which society was intended to procure. Men associate for their mutual advantage. Hence the good and happiness of the members, that is, the majority of the members of any state, is the great standard by which every thing relating to that state must finally be determined; and though it may be supposed that a body of people may be bound by a voluntary resignation (which they have been so infatuated as to make) of all their interests to a single person, or to a few, it can never be conceived that the resignation is obligatory to their posterity; because it is manifestly contrary to the good of the whole that it should be so.

These are the sentiments of the wisest and most virtuous champions of freedom. Attend to a portion on this subject from a book in our defence, written, I had almost said by the pen of inspiration. "I lay no stress," says he, "on charters—they derive their rights from a higher source. It is inconsistent with common sense to imagine that any people would ever think of settling in a distant country, on any such condition, or that the people from whom they withdrew should for ever be masters of their property, and have power to subject them to any modes of government they pleased. And had there been express stipulations to this purpose in all the charters of the colonies, they would, in my opinion, be no more bound by them, than if it had been stipulated with them, that they should go naked, or expose themselves to the incursions of wolves and tigers."

Such are the opinions of every virtuous and enlightened patriot in Great Britain. Their petition to heaven is—"That there may be one free country left upon earth, to which they may fly, when venality, luxury, and vice, shall have completed the ruin of liberty there."

Courage, then, my countrymen! our contest is not only whether we ourselves shall be free, but whether there shall be left to mankind an asylum on earth, for civil and religious liberty? Dismissing therefore the justice of our cause, as incontestable, the only question is, What is best for us to pursue in our present circumstances?

The doctrine of dependence on Great Britain is, I believe, generally exploded; but as I would attend to the honest weakness of the simplest of men, you will pardon me if I offer a few words on that subject.

We are now on this continent, to the astonishment of the world; three millions of souls united in one common cause. We have large armies, well disciplined and appointed, with commanders inferior to none in military skill, and superior in activity and zeal. We are furnished with arsenals and stores beyond our most sanguine expectations, and foreign nations are waiting to crown our success by their alliances. There are instances of, I would say, an almost astonishing Providence in our favor; our success has staggered our enemies, and al-

most given faith to infidels; so that we may truly say it is not our own arm which has saved us.

The hand of heaven appears to have led us on to be, perhaps, humble instruments and means in the great Providential dispensation which is completing. We have fled from the political Sodom; let us not look back, lest we perish and become a monument of infamy and derision to the world! For can we ever expect more unanimity and a better preparation for defence; more infatuation of counsel among our enemies, and more valor and zeal among ourselves? The same force and resistance which are sufficient to procure us our liberties, will secure us a glorious independence and support us in the dignity of free, imperial States. We cannot suppose that our opposition has made a corrupt and dissipated nation more friendly to America, or created in them a greater respect for the rights of mankind. We can therefore expect a restoration and establishment of our privileges, and a compensation for the injuries we have received from their want of power, from their fears, and not from their virtues. The unanimity and valor, which will effect an honorable peace, can render a future contest for our liberties unnecessary. He who has strength to chain down the wolf, is a madman if he lets him loose without drawing his teeth and paring his nails.

From the day on which an accommodation takes place between England and America, on any other terms than as independent States, I shall date the ruin of this country. A politic minister will study to lull us into security, by granting us the full extent of our petitions. The warm sunshine of influence would melt down the virtue, which the violence of the storm rendered more firm and unyielding. In a state of tranquillity, wealth and luxury, our descendants would forget the arts of war, and the noble activity and zeal which made their ancestors invincible. Every art of corruption would be employed to loosen the bond of union which renders our resistance formidable. When the spirit of liberty which now animates our hearts and gives success to our arms is extinct, our numbers will accelerate our ruin, and render us easier victims to tyranny.\* Ye aban-

\* Temporary tumults and civil wars may give much disturbance to rulers, but they do not constitute the real misfortunes of a people, who may even enjoy some respite while they are disputing who shall play the tyrant over them. It is from their permanent situation that their real prosperity or calamity must arise; when all submit tamely to the yoke, then it is that all are perishing, then it is that their chiefs, destroying them at their ease, *ubi solitudinem faciunt pacem appellant*. When the intrigues of the ministry agitated the kingdom of France, and the coadjutor of Paris carried a poniard in his pocket to Parliament, all this did not hinder the bulk of the French nation from growing numerous and enjoying themselves in happiness and at their ease. Ancient Greece flourished in the midst of the most cruel wars; human blood was spilt in torrents, and yet the country swarmed with inhabitants. It appears, says Machiavel, that in the

midst of murders, proscriptions, and civil wars, our republic became only the more powerful: the virtue of the citizens, their manners, their independence, had a greater effect to strengthen it, than all its dissensions had to weaken it. A little agitation gives vigor to the mind, and liberty, not peace, is the real source of the prosperity of our species.—  
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done minions of an infatuated ministry, if peradventure any should yet remain among us!—remember that a Warren and Montgomery are numbered among the dead. Contemplate the mangled bodies of your countrymen, and then say, What should be the reward of such sacrifices? Bid us and our posterity bow the knee, supplicate the friendship, and plough, and sow, and reap, to glut the avarice of the men who have let loose on us the dogs of war to riot in our blood, and hunt us from the face of the earth? If ye love wealth better than liberty, the tranquillity of servitude, than the animating contest of freedom—go from us in peace. We ask not your counsels or arms. Crouch down and lick the hands which feed you. May your chains set lightly upon you, and may posterity forget that ye were our countrymen.

To unite the Supremacy of Great Britain and the Liberty of America, is utterly impossible. So vast a continent and of such a distance from the seat of empire, will every day grow more unmanageable. The motion of so unwieldy a body cannot be directed with any dispatch and uniformity, without committing to the Parliament of Great Britain, powers inconsistent with our freedom. The authority and force which would be absolutely necessary for the preservation of the peace and good order of this continent, would put all our valuable rights within the reach of that nation.

As the administration of government requires firmer and more numerous supports in proportion to its extent, the burdens imposed on us would be excessive, and we should have the melancholy prospect of their increasing on our posterity. The scale of officers, from the rapacious and needy commissioner, to the haughty governor, and from the governor with his hungry train, to perhaps a licentious and prodigal viceroy, must be upheld by you and your children. The fleets and armies which will be employed to silence your murmurs and complaints must be supported by the fruits of your industry.

And yet, with all this enlargement of the expense and powers of government, the administration of it at such a distance, and over so extensive a territory, must necessarily fail of putting the laws into vigorous execution, removing private oppressions, and forming plans for the advancement of agriculture and commerce, and preserving the vast empire in any tolerable peace and security. If our posterity retain any spark of patriotism, they can never tamely submit to such burthens. This country will be made the field of bloody contention till it gains that independence for which nature

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formed it. It is therefore injustice and cruelty to our offspring, and would stamp us with the character of baseness and cowardice, to leave the salvation of this country to be worked out by them with accumulated difficulty and danger.

Prejudice, I confess, may warp our judgments. Let us hear the decision of Englishmen on this subject, who cannot be suspected of partiality: "The Americans," say they, "are but little short of half our number. To this number they have grown from a small body of original settlers by a very rapid increase. The probability is that they will go on to increase, and that in 50 or 60 years, they will be double our number; and form a mighty empire, consisting of a variety of States, all equal or superior to ourselves in all the arts and accomplishments which give dignity and happiness to human life. In that period will they be still bound to acknowledge that supremacy over them which we now claim? Can there be any person who will assert this, or whose mind does not revolt at the idea of a vast continent, holding all that is valuable to it, at the discretion of a handful of people on the other side the Atlantic? But if at that period this would be unreasonable, what makes it otherwise now? Draw the line if you can. But there is still a greater difficulty."

"Britain is now, I will suppose, the seat of liberty and virtue, and its legislature consists of a body of able and independent men, who govern with wisdom and justice. The time may come when all will be reversed; when its excellent constitution of government will be subverted; when pressed by debts and taxes, it will be greedy to draw to itself an increase of revenue from every distant province, in order to ease its own burdens; when the influence of the crown, strengthened by luxury and an universal profligacy of manners, will have tainted every heart, broken down every fence of liberty, and rendered us a nation of tame and contented vassals; when a general election will be nothing but a general auction of boroughs, and when the Parliament, the grand council of the nation, and once the faithful guardian of the state, and a terror to evil ministers, will be degenerated into a body of sycophants, dependant and venal, always ready to confirm any measures, and little more than a public court for registering royal edicts. Such, it is possible, may, some time or other, be the state of Great Britain. What will at that period be the duty of the colonies? Will they be still bound to unconditional submission? Must they always continue an appendage to our government, and follow it implicitly through every change that can happen to it? Wretched condition indeed, of millions of freemen as good as ourselves! Will you say that we now govern equitably, and that there is no danger of such revolution? Would to God that this were true. But will you not always say the same? Who shall judge whether we govern equitably or not? Can you give the colonies any security that

such a period will never come?"—No! THE PERIOD, COUNTRYMEN, IS ALREADY COME. The calamities were at our door. The rod of oppression was raised over us. We were roused from our slumbers, and may we never sink into repose until we can convey a clear and undisputed inheritance to our posterity. This day we are called upon to give a glorious example of what the wisest and best of men were rejoiced to view, only in speculation. This day presents the world with the most august spectacle that its annals ever unfolded. Millions of freemen, deliberately and voluntarily forming themselves into a society for their common defence and common happiness. Immortal spirits of Hampden, Locke, and Sidney! will it not add to your benevolent joys to behold your posterity rising to the dignity of men, and evincing to the world the reality and expediency of your systems, and in the actual enjoyments of that equal liberty, which you were happy, when on earth, in delineating and recommending to mankind!

Other nations have received their laws from conquerors; some are indebted for a constitution to the sufferings of their ancestors through revolving centuries. The people of this country, alone, have formally and deliberately chosen a government for themselves, and with open and uninfluenced consent, bound themselves into a social compact. Here, no man proclaims his birth or wealth as a title to honorable distinction, or to sanctify ignorance and vice with the name of hereditary authority. He who has most zeal and ability to promote public felicity, let him be the servant of the public.\* This is the only line of distinction drawn by nature. Leave the bird of night to the obscurity for which nature intended him, and expect only from the eagle to brush the clouds with his wings, and look boldly in the face of the sun.

Some who would persuade us that they have tender feelings for future generations, while they are insensible to the happiness of the present, are perpetually foreboding a train of dissensions under our popular system. Such men's reasoning amounts to this—give up all that is valuable to Great Britain, and then you will have no inducements to quarrel among yourselves; or suffer yourselves to be chained down by your enemies, that you may not be able to fight with your friends.†

\* A celebrated foreigner gives us a very just description of the methods by which eminence is generally acquired in monarchies. "One makes a fortune because he can cringe, another because he can lie; this man because he reasonably dishonors himself; that, because he betrays his friend; but the surest means to mount as high as Alberoni, is to offer, like him, ragouts of mushrooms to the Duke of Vendome, and there are Vendomes every where. They who are called great, have generally no other ascendancy over us but what our weakness permits them, or what our meanness gives them."

† From the absurd reasonings of some men we may conclude that they are of opinion, that all free governments are

This is an insult on your virtue as well as your common sense. Your unanimity this day and through the course of the war, is a decisive refutation of such invidious predictions. Our enemies have already had evidence that our present constitution contains in it the justice and ardor of freedom, and the wisdom and vigor of the most absolute system. When the law is the will of the people, it will be uniform and coherent; but fluctuation, contradiction, and inconsistency of councils must be expected under those governments where every revolution in the ministry of a court produces one in the State. Such being the folly and pride of all ministers, that they ever pursue measures directly opposite to those of their predecessors.

We shall neither be exposed to the necessary convulsions of elective Monarchies, nor to the want of wisdom, fortitude, and virtue, to which hereditary succession is liable. In your hands it will be to perpetuate a prudent, active and just legislature, and which will never expire until you yourselves lose the virtues which give it existence.

And, brethren and fellow-countrymen, if it was ever granted to mortals to trace the designs of Providence, and interpret its manifestations in favor of their cause, we may, with humility of soul, cry out, Not unto us, not unto us, but to thy Name be the praise. The confusion of the devices among our enemies, and the rage of the elements against them, have done almost as much towards our success as either our councils or our arms.

The time at which this attempt on our liberties was made, when we were ripened into maturity, had acquired a knowledge of war, and were free from the incursions of enemies in this country, the gradual advances of our oppressors enabling us to prepare for our defence, the unusual fertility of our lands and clemency of the seasons, the success which at first attended our feeble arms, producing unanimity among our friends and reducing our internal foes to acquiescence—these are all strong and palpable marks and assurances, that Providence is yet

equally liable to convulsions, but the differences that are in the constitution and genius of popular governments are astonishingly great, some being for defence, some for increase, some more equal, others more unequal; some turbulent and seditious, others like streams in a perpetual tranquillity. That which causeth much sedition in a commonwealth is inequality, as in Rome where the Senate oppressed the people. But if a commonwealth be perfectly equal, it is void of sedition, and has attained to perfection, being void of all internal causes of dissolution. Many ancient moral writers, Cicero in particular, have said, that a well constituted commonwealth is immortal—*Eterna est*. An equal commonwealth is a government founded upon a balance which is perfectly popular, and which from the balance, through the free suffrage of the people given by ballot, amounts, in the superstructures, to a Senate debating and proposing, a representative of the people resolving, and a magistracy executing; each of these three orders being upon rotation, that is, elected for certain terms, enjoining like intervals.—*Vide Harrington.*

gracious unto Zion, that it will turn away the captivity of Jacob.

Our glorious reformers when they broke through the fetters of superstition, effected more than could be expected from an age so darkened. But they left much to be done by their posterity. They lopped off, indeed, some of the branches of popery, but they left the root and stock when they left us under the domination of human systems and decisions, usurping the infallibility which can be attributed to Revelation alone. They dethroned one usurper only to raise up another; they refused allegiance to the Pope, only to place the civil magistrate in the throne of Christ, vested with authority to enact laws, and inflict penalties in his kingdom. And if we now cast our eyes over the nations of the earth we shall find, that instead of possessing the pure religion of the gospel, they may be divided either into infidels who deny the truth, or politicians who make religion a stalking horse for their ambition, or professors, who walk in the trammels of orthodoxy, and are more attentive to traditions and ordinances of men than to the oracles of truth.

The civil magistrate has every where contaminated religion by making it an engine of policy; and freedom of thought and the right of private judgment, in matters of conscience, driven from every other corner of the earth, direct their course to this happy country as their last asylum. Let us cherish the noble guests, and shelter them under the wings of an universal toleration. Be this the seat of unbounded religious freedom. She will bring with her in her train, industry, wisdom, and commerce. She thrives most when left to shoot forth in her natural luxuriance, and asks from human policy, only not to be checked in her growth by artificial encouragements.

Thus by the beneficence of Providence, we shall behold our empire arising, founded on justice and the voluntary consent of the people, and giving full scope to the exercise of those faculties and rights which most ennoble our species. Besides the advantages of liberty and the most equal constitution, heaven has given us a country with every variety of climate and soil, pouring forth in abundance whatever is necessary for the support, comfort, and strength of a nation. Within our own borders we possess all the means of sustenance, defence, and commerce; at the same time, these advantages are so distributed among the different States of this continent, as if nature had in view to proclaim to us—be united among yourselves, and you will want nothing from the rest of the world.

The more northern States most amply supply us with every necessary, and many of the luxuries of life;—with iron, timber, and masts for ships of commerce or of war; with flax for the manufactory of linen, and seed either for oil or exportation.

So abundant are our harvests, that almost every part raises more than double the quantity of grain requisite for the support of the

inhabitants. From Georgia and the Carolinas, we have, as well for our own wants as for the purpose of supplying the wants of other powers, in *tigo*, rice, hemp, naval stores, and lumber.

Virginia and Maryland teem with wheat, Indian corn, and tobacco. Every nation whose harvest is precarious, or whose lands yield not those commodities, which we cultivate, will gladly exchange their superfluities and manufactures for ours.

✓ We have already received many and large cargoes of clothing, military stores, &c., from our commerce with foreign powers, and in spite of the efforts of the boasted Navy of England, we shall continue to profit by this connection.

The want of our naval stores has already increased the price of these articles to a great height, especially in Britain. Without our lumber, it will be impossible for those haughty islanders to convey the products of the West Indies to their own ports;—for a while they may with difficulty effect it, but without our assistance, their resources soon must fail. Indeed, the West India Islands appear as the necessary appendages to this our empire. They must owe their support to it, and ere long, I doubt not, some of them will from necessity wish to enjoy the benefit of our protection.

These natural advantages will enable us to remain independent of the world, or make it the interest of European powers to court our alliance, and aid in protecting us against the invasions of others. What argument therefore do we want, to show the equity of our conduct; or motive of interest to recommend it to our prudence? Nature points out the path, and our enemies have obliged us to pursue it.

If there is any man so base or so weak, as to prefer a dependence on Great Britain, to the dignity and happiness of living a member of a free and independent nation—let me tell him that necessity now demands what the generous principle of patriotism should have dictated.

We have now no other alternative than independence, or the most ignominious and galling servitude. The legions of our enemies thicken on our plains; desolation and death mark their bloody career; whilst the mangled corpses of our countrymen seem to cry out to us as a voice from heaven—"Will you permit our posterity to groan under the galling chains of our murderers? Has our blood been expended in vain? Is the only reward which our constancy, till death, has obtained for our country, that it should be sunk into a deeper and more ignominious vassalage? Recollect who are the men that demand your submission; to whose decrees you are invited to pay obedience! Men who, unmindful of their relation to you as

brethren, of your long implicit submission to their laws; of the sacrifice which you and your forefathers made of your natural advantages for commerce to their avarice,—formed a deliberate plan to wrest from you the small pittance of property which they had permitted you to acquire. Remember that the men who wish to rule over you, are they who, in pursuit of this plan of despotism, annulled the sacred contracts which had been made with your ancestors; conveyed into your cities a mercenary soldiery to compel you to submission by insult and murder—who called your patience, cowardice; your piety, hypocrisy."

Countrymen! the men who now invite you to surrender your rights into their hands, are the men who have let loose the merciless savages to riot in the blood of their brethren—who have dared to establish popery triumphant in our land—who have taught treachery to your slaves, and courted them to assassinate your wives and children.

These are the men to whom we are exhorted to sacrifice the blessings which Providence holds out to us—the happiness, the dignity of uncontrolled freedom and independence.

Let not your generous indignation be directed against any among us, who may advise so absurd and madning a measure. Their number is but few and daily decreases; and the spirit which can render them patient of slavery, will render them contemptible enemies.

Our Union is now complete; our Constitution composed, established, and approved. You are now the guardians of your own liberties. We may justly address you, as the Decemviri did the Romans, and say—"Nothing that we propose, can pass into a law without your consent. Be yourselves, O Americans, the authors of those laws on which your happiness depends."

You have now in the field, armies sufficient to repel the whole force of your enemies, and their base and mercenary auxiliaries. The hearts of your soldiers beat high with the spirit of freedom—they are animated with the justice of their cause, and while they grasp their swords, can look up to heaven for assistance. Your adversaries are composed of wretches who laugh at the rights of humanity, who turn religion into derision, and would, for higher wages, direct their swords against their leaders or their country. Go on, then, in your generous enterprise, with gratitude to heaven, for past success, and confidence of it in the future. For my own part, I ask no greater blessing than to share with you the common danger and common glory. If I have a wish dearer to my soul, than that my ashes may be mingled with those of a Warren and Montgomery—it is—that these American States may never cease to be free and independent!



## JOSIAH QUINCY, JR.

THIS brilliant patriot was born in Boston, Massachusetts, on the twenty-third of February, 1744. Under the tuition of Mr. Joseph Marsh, who was for many years a very successful teacher at Braintree, young Quincy perfected himself in the rudiments of the classics. In 1759, he entered Harvard College, and graduated in 1763, with unblemished reputation. On taking his degree of Master of Arts, he pronounced the English oration, at that time considered the highest honor of the college. His subject was "Patriotism," and it appears by the periodical publications of the day, that he acquired great reputation, both on account of the composition and delivery. He commenced the study of law with Oxenbridge Thacher, in 1763, on leaving college, and on the death of that gentleman in 1765, remained in his office, took a general care and supervision of its affairs, succeeded to an extensive practice, and soon became distinguished for his zeal, learning and eloquence.

At an early period the politics of the colonies attracted his attention. In the fall of 1767, quickened by the avowal of Parliament of its absolute right over the colonies; the arrival of fresh troops to maintain that right; the determination of the ministry to impose additional taxes and other unjust and burdensome acts, he commenced his political writings, under the signature of *Hyperion*. Two pieces were published by him in the Boston Gazette, the spirit of which can be best understood by the following extracts:—"When I reflect on the exalted character of the ancient Britons, on the fortitude of our illustrious predecessors, on the noble struggles of the late memorable period, and from these reflections, when by a natural transition, I contemplate the gloomy aspect of the present day, my heart is alternately torn with hope and doubt, despondency and terror. Can the true, generous magnanimity of British heroes, be entirely lost in their degenerate progeny? Is the genius of liberty which so late inflamed our bosoms, fled for ever?"

"An attentive observer of the deportment of some particular persons in this metropolis, would be apt to imagine that the grand point was gained; that the spirit of the people was entirely broken to the yoke; that all America was subjugated to bondage! Already the minions of power, in fancy, fatten and grow wanton on the spoils of the land. They insolently toss the head, and put on the air of contemptuous disdain. In the imaginary possession of lordships and dominions, these potentates and powers dare tell us, that our only hope is to crouch, to cowl under, and to kiss the iron rod of oppression. Precious sample of the meek and lowly temper of those who are destined to be our lords and masters!"

"Be not deceived, my Countrymen. Believe not these venal hirelings, when they would cajole you by their subtleties into submission, or frighten you by their vaporings into compliance. When they strive to flatter you by the terms, 'moderation and prudence,' tell them that calmness and deliberation are to guide the judgment; courage and intrepidity command the action. When they endeavor to make us 'perceive our inability to oppose our mother country,' let us boldly answer: In defence of our civil and religious rights we dare oppose the world; with the God of armies on our side, even the God who fought our fathers' battles, we fear not the hour of trial, though the hosts of our enemies should cover the field like locusts. If this be enthusiasm, we will live and die enthusiasts."

"Blandishments will not fascinate us, nor will threats of a 'halter' intimidate. For under God, we are determined, that wheresoever, whensoever, or howsoever, we shall be called to make our exit, we will die freemen. Well do we know that all the regalia of this world cannot dignify the death of a villain, nor diminish the ignominy with which a slave shall quit his existence. Neither can it taint the unblemished honor of a son of freedom, though he should make his departure on the already prepared gibbet, or be dragged to the newly erected scaffold for execution. With the plaudits of his conscience he will go off the stage. A crown of joy and immortality shall be his reward. The history of his life, his children shall venerate. The virtues of their sire shall excite their emulation."

The writings of Mr. Quincy rendered him highly obnoxious to the officers of the Crown, more especially to those of the Supreme Court of his native State, and he was denied the honors of the gown, which were then due him from his position at the bar. Notwithstanding this circumstance, and the multiplied labors of his profession, he continued his literary efforts with undisguised zeal and patriotism.\* In one of his essays, published in Boston, a few days previous to the Boston Massacre, in 1770, he said: "In answer to the question, 'What end is the non-importation argument to answer?'—I give the following reply: From a conviction in my own mind, that America is now the slave of Britain; from a sense that we are every day more and more in danger of an increase of our burdens, and a fastening of our shackles, I wish to see my countrymen break off,—*off for ever!*—all social intercourse with those whose commerce contaminates, whose luxuries poison, whose avarice is insatiable, and whose unnatural oppressions are not to be borne. That Americans will have their rights, that they will resume, assert, and defend them, are matters of which I harbor no doubt. Whether the arts of *policy*, or the arts of war will decide the contest, are problems we will solve at a more convenient season. He whose heart is enamored with the refinements of political artifice and finesse, will seek one mode of relief; he whose heart is free, honest, and intrepid, will pursue another, a bolder, and more noble mode of redress. This reply is so intelligible, that it needs no comment or explanation."

At the trial of the soldiers of the twenty-ninth regiment, for the murder of Samuel Carr and others, on the night of the fifth of March, 1770, Mr. Quincy, associated as junior counsel with John Adams, appeared in their defence. The state of public feeling, and the disadvantages under which Mr. Quincy labored at that time, can best be understood by the following extract of a letter from his father upon the subject: "I am under great affliction, at hearing the bitterest reproaches uttered against you, for having become an advocate for those criminals who are charged with the murder of their fellow-citizens. Good God! is it possible? I will not believe it. \* \* \* I have heard the severest reflections made upon the occasion by men who had just before manifested the highest esteem for you, as one destined to be a saviour of your country. I must own to you it has filled the bosom of your aged and infirm parent with anxiety and distress, lest it should prove destructive of your reputation and interest."

To this Mr. Quincy replied, "I have little leisure and less inclination either to know or to take notice of those ignorant slanderers, who have dared to utter their 'bitter reproaches' in your hearing against me, for having become an advocate for criminals charged with murder. But the sting of reproach, when envenomed only by envy and falsehood, will never prove mortal. Before pouring their reproaches into the ear of the aged and infirm, if they had been friends they would have surely spared a little reflection on the nature of an attorney's oath and duty—some trifling scrutiny into the business and discharge of his office, and some small portion of patience in viewing my past and future conduct." Mr. Quincy's speech in this trial is given

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\* Among his original papers for the year 1770, are *An address of the merchants, traders, and freeholders of the town of Boston, assembled at Faneuil Hall, January 23, 1770, for the purpose of enforcing the non-importation act: two essays* under the signature of *An Independent*, published in the Boston Gazette of the 12th and 26th of February; another signed *An Old Man*, in the same paper of August 6th: and the *Report of a Committee appointed to draw up Instructions, for the representatives of the town of Boston, and which was unanimously accepted by the inhabitants, 15th May, 1770.* The original draft of this report in the autograph of Mr. Quincy, exists among his papers.—*Quincy's Life of Quincy.*

in the subsequent pages of this volume. The soldiers were acquitted, and the trial terminated in a manner honorable to the character of the American people.

Mr. Quincy continued actively engaged in the duties of his profession during the years 1771 and 1772, at the same time employing his pen in the cause of his countrymen. All his essays breathe that bold, ardent, and vehement spirit which was so characteristic of his life and actions; all intended to expose the character and design of the British ministry and their agents. These duties, added to the arduous labors of his profession, worked with serious effect upon the constitution of Mr. Quincy, and through the advice of his friends and according with the opinion of his physician, he relinquished all cares except those which were incident to his health. In February, 1773, he sailed for South Carolina, where he arrived on the last day of that month. In the record of this journey, he gives many interesting incidents relating to the manners, appearance, political and social condition of the southern colonists at that period.\* Among other circumstances, he thus mentions a visit to the Commons House of Assembly, in session during his sojourn at Charleston: "Spent all the morning in hearing the debates of the House; had an opportunity of hearing the best speakers in the province.

"The first thing done at the meeting of the House, is to bring the mace, a very superb and elegant one, which cost ninety guineas, and lay it on the table before the speaker. The next thing is for the clerk to read over, in a very audible voice, the doings of the preceding day. The speaker is robed in black, and has a very large wig of State, when he goes to attend the chair (with the mace borne before him) on the delivery of speeches, &c. T. Lynch, Esq., spoke like a man of sense and a patriot; with dignity, fire, and laconism. Mr. Gadsden† was plain, blunt, hot, and incorrect, though very sensible. In the course of the debate, he used three very singular expressions for a member of parliament: 'And, Mr. Speaker, if the governor and council don't see fit to fall in with us, I say, let the general duty, law, and all go to the devil, sir, and we go about our business.' Parsons, J. Rutledge, and Chas. Pinckney, Sen., (the three first lawyers in the province) spoke on the occasion; the two last, very good speakers. The members of the House all sit with their hats on, and uncover when they rise to speak. They are not confined (at least they do not confine themselves) to any one place to speak in. The members conversed, lolled, and chatted much like a friendly jovial society when nothing of importance was before the House; nay, once or twice, while the speaker and clerk were busy in writing, the members spoke quite loud across the room to one another—a very unparliamentary appearance. The speaker put the question sitting; the members gave their votes by rising from their seats; the dissentients did not rise."

Mr. Quincy returned to Boston during the summer of 1773, and resumed his political publications. Among others, he published his ablest pamphlet, *Observations on the Act of Parliament, commonly called the "Boston Port Bill," with Thoughts on Civil Society and Standing Armies*. This work drew upon him the literary vengeance of the ministerial writers, and he was threatened with harm unless he would change his course of conduct. To an anonymous writer who warned him, through the columns of the Massachusetts Gazette, to desist from the part he was taking in the cause of the patriots, he replied, "The danger and the wrongs of my country are to me equally apparent. In all my public exertions, I feel a sense of right and duty, that not only satisfies my conscience, but inspires my zeal. \* \* \* Threats of impending danger, communicated by persons who conceal their name and character, ought never to deter from the path of duty, but exciting contempt rather than fear, they will determine a man of spirit to proceed with new vigor and energy, in his public conduct. My place of abode is well known, and I am easily found."

On the twenty-eighth of September, 1774, Mr. Quincy sailed from Salem for England, where he arrived on the eighth of November. His correspondence with the distinguished patriots of America at that period, is replete with the highest patriotism and self-denial. His letter to Joseph Reed, of Philadelphia, of December 17, 1774, is an everlasting evidence of his heroic

\* The Journal of this journey is published entire in the interesting memoir of Josiah Quincy, Jr. written by his son

† Christopher Gadsden, see page 118.

virtues. After reverting to the condition of American affairs in England, he concludes thus: "Let our countrymen well consider how much a British ministry, as well as themselves, have at stake. No arms, no arts, no plots, or conspiracies, will be thought unlawful weapons. Let them look all around them and be on their guard at every point. The blessing of the wise and the prayers of the pious, universally attend you; even throughout this nation.

"My dear sir, before I close I cannot forbear telling you that I look to my countrymen with the feelings of one, who verily believes they must yet seal their faith and constancy to their liberties, with blood. This is a distressing witness indeed! But hath not this ever been the lot of humanity? Hath not blood and treasure, in all ages, been the price of civil liberty? Can Americans hope a reversal of the laws of our nature, and that the best of blessings will be obtained and secured without the sharpest trials? Adieu, my friend, my heart is with you, and whenever my countrymen command, my person shall be also."

Having decided to return to America, Mr. Quincy left England on the sixteenth of March, 1775. His health had been gradually failing since he left his home, and on the twenty-sixth of April, within sight of that beloved country which he was not permitted to reach, neither supported by the kindness of friendship, nor cheered by the voice of affection, he expired.\*

### AN APPEAL

This production was written by Mr. Quincy, and published in the Boston Gazette, of the third of October, 1768, under the signature of "Hyperion."†

"The aggregated judgment of the common people," says an eminent writer, "discerns most truly the errors of government, for as much as they are the first to be sure to smart under them. In this only they come to be short-sighted; that though they know the diseases, they understand not the remedies, and though good patients they are ill physicians."

What are the present sentiments of the inhabitants of North America? Discern they not most truly, and smart they not most severely under the errors of government? The disease is known and felt; but where is the remedy,—where is the physician? For the people to ask counsel is deemed treasonable; to assemble themselves to consult, is denominated rebellion. Thus would some potentates terrify mankind with a few sounding technical expressions. It has been found, in all ages, difficult to persuade men, by the most refined court-chicane, out of their reason; and tyrants have ever found it impossible to argue, soothe, or frighten, the common people out of their feelings. It is truly strange to hear the arguments, and see the parade of some at this day. One would, from their conduct, be induced to imagine they thought it the most likely way of dispiriting the people, to render their case irremediable.

Certainly such politicians have little studied the volume of nature. A nation not as yet entirely enervated by luxury, not wholly depressed by slavery, when reduced to despair, are invincible to a proverb.

After what has been said and wrote, on both sides of the Atlantic, upon colony affairs; after the most perspicuous demonstration of the illegality and ill-policy of the measures pursued against this continent, it would be an affront to the understanding to attempt setting the matter in a clearer point of view. The meanest capacity must perceive, the remotest peasant in the wilds of America must feel, the consequences.

British taxation, suspensions of legislatures, and standing armies, are but some of the clouds which overshadow the Northern world. Heaven grant that a grand constellation of virtues may shine forth with redoubled lustre and enlighten this gloomy hemisphere!

If ever there was a time, this is the hour, for Americans to rouse themselves and exert every ability. Their all is at a hazard, and the die of fate spins doubtful! In vain do we talk of magnanimity and heroism; in vain do we trace a descent from the worthies of the earth, if we inherit not the spirit of our ancestors. Who is he, who boasteth of his patriotism? Has he vanquished luxury, and subdued the worldly pride of his heart? Is he not yet drinking the poisonous draught and rolling the sweet morsel under his tongue? He, who cannot conquer the little vanity of his heart, and deny the delicacy of a debauched palate, let him lay his hand upon his mouth, and his mouth in the dust.

Now is the time for this people to summon every aid, human and divine: to exhibit every

\* The life of Josiah Quincy, Jr., was written by his son, and published in 1825. To this work the editor is indebted for the materials of the present sketch.

† See the Life of Josiah Quincy, Jr., page 18.

moral virtue, and call forth every Christian grace. The wisdom of the serpent, the innocence of the dove, and the intrepidity of the lion, with the blessing of God, will yet save us from the jaws of destruction.

Where is the boasted liberty of Englishmen, if property may be disposed of, charters suspended, assemblies dissolved, and every valued right annihilated, at the uncontrollable will of an external power? Does not every man, who feels one ethereal spark yet glowing in his bosom, find his indignation kindle at the bare imagination of such wrongs? What would be our sentiments were this imagination realized?

Did the blood of the ancient Britons swell our veins, did the spirit of our forefathers inhabit our breasts, should we hesitate a moment in preferring death to a miserable existence in bondage? Did we reflect on their toils, their dangers, their fiery trials, the thought would inspire unconquerable courage.

Who has the front to ask, wherefore do you complain? Who dares assert every thing worth living for is not lost when a nation is enslaved? Are not pensioners, stipendiaries, and salary men (unknown before), hourly multiplying on us, to riot in the spoils of miserable America? Does not every eastern gale waft us some new insect, even of that devouring kind, which eat up every green thing? Is not the bread taken out of the children's mouths, and given unto the dogs? Are not our estates given to corrupt sycophants, without a design, or even a pretence of soliciting our assent, and our lives put into the hands of those whose tender mercies are cruelties? Has not an authority in a distant land, in the most public manner, proclaimed a right of disposing of *the all* of Americans? In short, what have we to lose—what have we to fear? Are not our distresses more than we can bear; and to finish all, are not our cities, in a time of profound peace, filled with standing armies, to preclude us from that last solace of the wretched—to open their mouths in complaint, and send forth their cries in bitterness of heart?

But is there no ray of hope? Is not Great Britain inhabited by the children of those renowned barons who waded through seas of crimson gore to establish their liberty; and will they not allow us, their fellow-men, to enjoy that freedom which we claim from nature, which is confirmed by our constitution, and which they pretend so highly to value? Were a tyrant to conquer us, the chains of slavery, when opposition should become useless, might

be supportable; but to be shackled by Englishmen,—by our equals,—is not to be borne!

By the sweat of our brow, we earn the little we possess: from nature we derive the common rights of man—and by charter we claim the liberties of Britons! Shall we, dare we, pusillanimously surrender our birthright? Is the obligation to our fathers discharged—is the debt we owe posterity paid? Answer me, thou coward, who hidest thyself in the hour of trial. If there is no reward in this life, no prize of glory in the next, capable of animating thy dastard soul: think and tremble, thou miscreant, at the whips and stripes thy master shall lash thee with on earth—and the flames and scorpions thy second master shall torment thee with hereafter!

Oh, my countrymen! what will our children say, when they read the history of these times, should they find we tamely gave away, without one noble struggle, the most invaluable of earthly blessings? As they drag the galling chain, will they not execrate us? If we have any respect for things sacred; any regard to the dearest treasure on earth—if we have one tender sentiment for posterity; if we would not be despised by the whole world—let us, in the most open, solemn manner, and with determined fortitude, swear we will die, if we cannot live freemen!

Be not lulled, my countrymen, with vain imaginations, or idle fancies. To hope for the protection of heaven, without doing our duty, and exerting ourselves as becomes men, is to mock the Deity. Wherefore had man his reason, if it were not to direct him? Wherefore his strength, if it be not his protection? To banish folly and luxury, correct vice and immorality, and stand immovable in the freedom in which we are free indeed, is eminently the duty of each individual, at this day. When this is done, we may rationally hope for an answer to our prayers; for the whole counsel of God, and the invincible armor of the Almighty.

However righteous our cause, we cannot, in this period of the world, expect a miraculous salvation. Heaven will undoubtedly assist us, if we act like men; but to expect protection from above, while we are enervated by luxury, and slothful in the exertion of those abilities with which we are endued, is an expectation vain and foolish. With the smiles of Heaven, virtue, unanimity, and firmness, will ensure success. While we have equity, justice and God on our side, tyranny, spiritual or temporal, shall never ride triumphant in a land inhabited by Englishmen.

## SPEECH IN DEFENCE OF THE SOLDIERS.

Mr. Quincy was associated with John Adams as counsel for the defence, at the trial of William Weems, James Hartigan, and others, soldiers in his Majesty's twenty-ninth regiment, for the murder of Crispus Attucks, Samuel Gray, and others, on Monday evening, the fifth of March, 1770.\* The following is his speech, taken from a report of the trial published in Boston, in 1770.

MAY IT PLEASE YOUR HONORS, AND YOU, GENTLEMEN OF THE JURY:—The prisoners at the bar, stand indicted for the murder of five of his Majesty's liege subjects, as set forth in the several indictments which have been read to you: the persons slain, these indictments set forth, as "being in the peace of God, and our lord the King," at the time of the mortal wounds given.

To these indictments, the prisoners have severally pleaded not guilty; and for their trial have put themselves on God and their country; which country you are. And by their pleas, thus severally pleaded, they are to stand or fall, by the evidence which shall respectively apply to them.

By their plea of not guilty, they throw the burden of proof, as to the fact of killing, upon the Crown; but, upon which being proved, the matters they allege to justify, excuse, or extenuate, must be adduced by them and supported by legal evidence. The truth of the facts they may thus allege, is your sole and undoubted province to determine; but upon a supposition that those facts shall appear to your satisfaction in the manner we allege, the grand question then to be determined, will be—whether such matters so proved, do in law extenuate, excuse, or justify. The decision of this question belongs to another department, namely the court. This is law so well known and acknowledged, that I shall not now detain you by a recital of authorities, but only refer to Judge Foster's Crown Law, where this point is treated with precision, and fixed beyond controversy. It may not be amiss, however, to assure you, that as certain as the cognizance of facts is within your jurisdiction, as certain does the law resulting from these facts, in cases of the present kind, seem to reside solely in the court: unless cases, where juries, under the direction of the court, give general verdicts, may be denominated exceptions.

I take it, that, in the cause now before us, it will not be contested that five persons were unfortunately killed, at the time the indictments charge; and this case will naturally enough

divide itself into three main divisions of enquiry.

1. Whether any homicide was committed?

2. By whom was it committed?

3. Is there any thing appearing in evidence which will justify, excuse, or extenuate such homicide, by reducing it to that species of offence, called manslaughter?

Before we enter upon these inquiries, permit me, gentlemen, to remind you of the importance of this trial, as it relates to the prisoners. It is for their lives! If we consider the number of persons now on trial, joined with many other circumstances which might be mentioned, it is by far the most important, this country ever saw.

Remember the ties you are under to the prisoners, and even to yourselves. The eyes of all are upon you. Patience in hearing this cause, is an essential requisite; candor and caution are no less essential. It is tedious and painful to attend so lengthy a trial; but remember the time which has been taken up by the Crown in the opening. By every bond of humanity and justice, we claim an equal indulgence; nay, it is of high importance to your country that nothing should appear on this trial, to impeach our justice or stain our humanity.

And here let me remind you of a notion, which has certainly been too prevalent, and guard you against its baneful influence. An opinion has been entertained by many among us, that the life of a soldier was of very little value; of much less value than others of the community. The law, gentlemen, knows no such distinction;—the life of a soldier is viewed by the equal eye of the law, as estimable as the life of any other citizen.

I cannot any other way account for what I mention, but by supposing that the indigence and poverty of a soldier,—the toils of his life,—the severity of discipline to which he is exposed,—the precarious tenure by which he is generally thought to hold his life, in the summary decisions of a court martial, have conspired to propagate a sentiment of this kind: but a little attention to the human heart will dissipate this notion.

The soldier takes his choice, like all others, of his course of life;—he has an equal right with you or me so to do. It is best we should not all think alike. Habit makes all things agreeable. What at first was irksome, soon becomes pleasing. But does experience teach that misery begets in general an hatred of life? By no means; we all reluct at death, we long for one short space more—we grasp, with anxious solicitude even after a wretched existence. God and nature has implanted this love of life. Expel, therefore, from your breasts an opinion so unwarrantable by any law, human or divine;

\* See John Adams's speech in the same cause, at page 235; also notes at pages 60, and 235, *ante*.

let not any thing so injurious to the prisoners, who value life as much as you; let not any thing so repugnant to all justice, have an influence on this trial. The reputation of the country depends much on your conduct, gentlemen, and, may I not add, justice calls aloud for candor in hearing, and impartiality in deciding this cause, which has perhaps too much engrossed our affections,—and I speak for one, too much excited our passions.

The law by which the prisoners are to be tried, is a law of mercy,—a law applying to us all,—a law, Judge Blackstone will tell us, “founded in principles that are permanent, uniform, and universal, always conformable to the feelings of humanity, and the indelible rights of mankind.”\*

How ought we all, who are to bear a part in this day, to aim at a strict adherence to the principles of this law,—how ought we all to aim at utterly eradicating every undue bias of the judgment,—a bias subversive of all justice and humanity.

Another opinion equally foreign to truth and law, has been adopted by many.

It has been thought that no possible case could happen, in which a soldier could fire, without the aid of a civil magistrate. This is a great mistake,—a very unhappy mistake indeed! One, I am afraid, that had its influence on the fatal night, which we all lament. The law, as to the present point, puts the citizen and soldier under equal restraint. What will justify and mitigate the action of the one, will do the same to the other. Let us bear this invariably in mind, in examining the evidence. But before we proceed to this examination, let us take a transient view of some occurrences preceding and subsequent to the melancholy fifth of March.

About some five or six years ago, it is well known, certain measures were adopted by the British Parliament which gave a general alarm to this continent. Measures were alternately taken in Great Britain, that awakened jealousy, resentment, fortitude and vigilance. Affairs continued long fluctuating. A sentiment universally prevailed, that our dearest rights were invaded. It is not our business here to inquire touching these delicate points. These are concerns, which, however interesting or important in themselves, we must keep far away from us, when in a court of law. It poisons justice, when politics tinctures its current.

I need not inform you, how the tide rose, as we are advancing towards the present times. The general attention became more and more roused—people became more alike in opinion and practice. A vast majority thought all that was dear was at stake—sentiments of liberty—property—ignominious bondage—all conspire to increase the ferment. At this period the troops land. Let us here pause and view the citizen and soldier.

The causes of grievance being thus spread far and wide, the inhabitants viewed the soldiery as called in, foreign from their prime institution, to force obedience to acts, which were in general deemed subversive of natural as well as constitutional freedom. With regard to the universal prevalence of ideas of this kind, it does not fall within our present plan, to give you direct, positive evidence. It would be too foreign to the present issue, though pertinent enough, when considered as a clue to springs and motives of action, and as an additional aid to form a just judgment in our present enquiry. You, gentlemen, who come from the body of the county, are presumed to know these facts, if they are true; nay, their notoriety must be such, provided I am not mistaken in my conjecture, that the justice of my observation on this matter must be certainly confirmed by your own experience. I presume not in this or any other matter of fact, to prescribe to you; if these sentiments are wrong, they ought to have no influence; if right, they ought certainly to have their due weight.

I say, gentlemen, and I appeal to you for the truth of what I say, that many on this continent viewed their chains as already forged; they saw fetters as prepared, they beheld the soldiers as fastening and riveting for ages, the shackles of their bondage. With the justness of these apprehensions, you and I have nothing to do in this place. Disquisitions of this sort are for the Senate and the Chamber of Council; they are for statesmen and politicians, who take a latitude in thoughts and actions; but we, gentlemen, are confined in our excursions by the rigid rules of law. Upon the real, actual existence of these apprehensions in the community, we may judge—they are facts, falling properly within our cognizance—and hitherto may we go, but not further. It is my duty, and I ought to impress it on your minds and you, gentlemen, ought to retain the impression. You are to determine on the facts coming to your knowledge,—you are to think, judge, and act as jurymen, and not as statesmen.

Matters being thus circumstanced, what might be expected? No room was left for cordiality and friendship. Discontent was seated on almost every brow. Instead of that hospitality, that the soldier thought himself entitled to, scorn, contempt, and silent murmurs were his reception. Almost every countenance lowered with a discontented gloom, and scarce an eye but flashed indignant fire.

Turn and contemplate the camp. Do we find a more favorable appearance?

The soldier had his feelings, his sentiments, and his characteristic passions also. The constitution of our government has provided a stimulus for his affections. The pride of conscious virtue, the sense of valor, the point of honor.

The law had taught him to think favorably of himself; had taught him to consider himself as peculiarly appointed for the safeguard

\* Sec. 4, 13, cap. 8.

and defence of his country.\* He had heard that he put not off the citizen, when he entered the camp; but because he was a citizen and wished to continue so, he made himself for a while a soldier.

How stinging was it to be stigmatized as the instrument of tyranny and oppression? How exasperating to be viewed as aiding to enthral his country? He felt his heart glow with an ardor which he took for a love of liberty and his country, and had formed to himself no design fatal to its privileges. He recollected, no doubt, that he had heretofore exposed himself for its service. He had bared his bosom in defence of his native soil, and as yet felt the smart of wounds received in conflict for his king and country. Could that spirit which had braved the shafts of foreign battle brook the keener wounds of civil contest? The arrows which now pierced him, pierced as deep, and rankled more, than those of former times. Is it rational to imagine much harmony could long exist? We must take human nature as we find it, and not vainly imagine that all things are to become new at such a crisis.

There is an order of men in every commonwealth who never reason, but always act from feeling. That their rights and liberties were filched away, one after another, they had often been told. They had been taught by those whom they believed, that the axe was now laid to the root of the tree and one more stroke completed its fall. It was in vain to expect to silence or subdue these emotions by reasons, soothing, or dangers. A belief, that nothing could be worse than the calamities which seemed inevitable, had extended itself on all sides, and arguments drawn from such sources had little influence. Each day gave rise to new occurrences, which increased animosities. Heart-burnings, heats, and bickerings became more and more extensive. Reciprocal insults soured the temper, mutual injuries embittered the passions.

Can we wonder that, when every thing tended to some important action, the period so soon arrived? Will not our wonder be increased to find the crisis no sooner taking place, when so many circumstances united to hasten its approach? To use an illusion somewhat homely, may we not wonder that the acid and the alkali did not sooner ferment?

A thought here imperceptibly forces itself on our minds, and we are led to be astonished that persons so discordant in opinion, so opposite in views, attachments and connections, should be stationed together. But here, gentlemen, we must stop. If we pursue this inquiry at this time, and in this place, we shall be in danger of doing great injustice. We shall get beyond our limits. The right of quartering troops in this province must be discussed at a different tribunal. The constitutional legality, the propriety, the expediency of their appointment are

questions of State, not to be determined, nor even agitated by us in this court. It is enough for us if the law takes notice of them when thus stationed; if it warrants their continuance; if it protects them in their quarters. They were sent here by that authority which our laws know; they were quartered here, as I take it, agreeable to an act of the British Parliament; they were ordered here by your sovereign, and mine. I expect, hereafter, to be more particular on this head.

Let me here take a method very common with another order of men. Let me remind you of what is not your duty.

Gentlemen, great pains have been taken by different men, with very different views, to involve the character, the conduct, and reputation of the town of Boston in the present issue. Boston, and its inhabitants, have no more to do with this cause than you or any other members of the community. You are, therefore, by no means to blend two things, so essentially different as the guilt or innocence of this town, and the prisoners, together. The inhabitants of Boston, by no rules of law, justice, or common sense, can be supposed answerable for the unjustifiable conduct of a few individuals, hastily assembled in the streets. Every populous city, in like circumstances, would be liable to similar commotions, if not worse. No rational or honest man will form any worse opinion of this metropolis, for the transactions of that melancholy night. Who can, who will, unnecessarily interest themselves to justify the rude behavior of a mixed and ungovernable multitude? May I not appeal to you, and all who have heard this trial, thus far, that things already wear a different aspect from what we have been heretofore taught to expect? Had any one told you some weeks ago, that the evidence on the crown side would have appeared in its present light, would you have believed it? Can any one think it his duty to espouse the part acted by those assembled in King street? I think not; but lest my opinion should not have any weight, let me remind you of an author, whom I trust and wish in the hands of all of you. One whom I trust you will credit. I am sure you ought to love and revere him. I wish his sentiments were engraven in indelible characters on your heart. You will not suspect him of being unfriendly to liberty, if this cause and its event must, at all hazards, be held as interwoven with a matter so foreign to it. I allude to the third letter of the Farmer of Pennsylvania,\* to his countrymen. "The cause of liberty," says that great and good writer, "is a cause of too much dignity, to be sullied by turbulence and tumult. It ought to be maintained in a manner suitable to her nature. Those who engage in it should breathe a sedate, yet fervent spirit,—animating them to actions of prudence, justice, modesty, bravery, humanity, and magnanimity."

What has then transpired on this trial, savor-

\* See Blackstone's Commentaries, vol. 1, p. 407.

\* John Dickinson, see page 278



ing of any these virtues? Was it justice, or humanity to attack, insult, ridicule, and abuse a single sentinel on his post? Was it either modest, brave, or magnanimous to rush upon the points of fixed bayonets, and trifle, vapor, and provoke at the very mouths of loaded muskets? It may be brutal rage or wanton rashness, but not surely any true magnanimity.

"I hope," says the same eminent writer, "my dear countrymen, that you will, in every colony, be upon your guard against those who, at any time, endeavor to stir you up under pretences of patriotism, to any measures disrespectful to your sovereign, and our mother country."

By this, it should seem as though the Farmer never expected any period would arrive, when such measures would be warrantable. Now, what more disrespectful to our parent country, than to treat with contempt a body of men stationed, most certainly, by the consent of her supreme legislative, the Parliament of Britain? What more disrespectful of our common sovereign than to assume the sword of justice, and become the avengers of either public or private wrongs? Though the soldiers, who appeared in the earlier part of the evening in Cornhill, acted like barbarians and savages, they had now retired and were confined in their barracks; what though an impertinent boy had received unjustifiable correction from the sentinel, the boy and the persons in Cornhill must have recourse only to the law for their redress. Courts of law are styled "*vindices injuriarum*," the avengers of injuries, and none others are to assume this prerogative. The law erects itself as the supreme dernier resort in all complaints of wrongs; and nothing could more essentially sap our most important interests than any countenance to such dangerous encroachments on the domains of municipal justice.

But, finally, to finish with the justly celebrated Farmer—"hot, rash, disorderly proceedings injure the reputation of a people as to wisdom, valor, and virtue, without procuring the least benefit." Thus have you the sense of this great authority with us. And let me ask all those who have thought the cause of their country connected with the agents of the assembly in King street, whether the proceedings of that unhappy night were hot, rash, or disorderly? If they were, have they not, in the opinion of this great friend of liberty, injured our reputation as to wisdom, valor, and virtue, and that too, without procuring the least benefit? Who then would sacrifice his judgment and his integrity to vindicate such proceedings?

To what purposes the soldiers were sent; whether it was a step warranted by sound policy or not, we shall not inquire; we are to consider the troops not as the instruments for wresting our rights, but as fellow-citizens, who being to be tried by a law, extending to every individual, claim a part in its benefits, its privileges, its mercy. We must steel ourselves against passions, which contaminate the fountains of justice. We ought to recollect that

our present decisions will be scanned perhaps through all Europe. We must not forget that we ourselves will have a reflective hour—an hour, in which we shall view things through a different medium—when the pulse will no longer beat with the tumults of the day—when the conscious pang of having betrayed truth, justice, and integrity, shall bite like a serpent and sting like an adder.

Consider, gentlemen, the danger which you and all of us are in, of being led away by our affections and attachments. We have seen the blood of our fellow men flowing in the streets. We have been told that this blood was wrongfully shed. That is now the point in issue. But let it be borne deep upon our minds, that the prisoners are to be condemned by the evidence here in court produced against them, and by nothing else. Matters heard or seen abroad are to have no weight: in general they undermine the pillars of justice and truth. It has been our misfortune, that a system of evidence has appeared in the world against us. It is not our business to blame any one for this. It is our misfortune, I say. It should be remembered that we were not present to cross-examine: and the danger which results from having this publication in the hands of those who are to pass upon our lives, ought to be guarded against. We say we are innocent by our plea, and are not to be denounced guilty upon a new species of evidence unknown in the English system of criminal law.

But as though a series of *ex parte* evidence was not enough, all the colors of the canvas have been touched in order to freshen the wounds, and by a transport of imagination, we are made present at the scene of action. The prints exhibited in our houses have added wings to fancy, and in the fervor of our zeal, reason is in hazard of being lost. For, as was elegantly expressed by a learned gentleman at the late trial, "The passions of man, nay, his very imaginations are contagious." The pomp of funeral, the horrors of death, have been so delineated, as to give a spring to our ideas, and inspire a glow incompatible with sound, deliberative judgment. In this situation every passion has alternately been predominant. They have, each in its turn, subsided in degree, and they have sometimes given place to despondence, grief, and sorrow. How careful should we be that we do not mistake the impressions of gloom and melancholy for the dictates of reason and truth. How careful, lest borne away by a torrent of passion, we make shipwreck of conscience.

Perhaps you may be told, gentlemen, as I remember it was said at the late trial, that passions were like the flux and reflux of the sea—the highest tides always producing the lowest ebbs. But let it be noticed that the tide in our political ocean has yet never turned; certainly the current has never set towards the opposite quarter. However similes may illustrate, they never go for proof. Though I be-

lieve that it will be found, that if the tide of resentment has not risen of late, it has been because it has reached the summit. In the same mode of phraseology, if so homely an expression may be used, perhaps, as the seamen say, it has been high-water slack; but I am satisfied the current has not yet altered its course in favor of the prisoners at the bar.

Many things yet exist, sufficient to keep alive the glow of indignation. I have aimed at securing you against the catching flame. I have endeavored to discharge my duty in this respect. What success will follow these endeavors, depends on you, gentlemen. If being told of your danger will not produce caution, nothing will. If you are determined in opinion, it is in vain to say more; but if you are zealous inquirers after truth, if you are willing to hear with impartiality—to examine and judge for yourselves—enough has been said to apprise you of those avenues, at which the enemies of truth and justice are most likely to enter, and most easily to beset you.

Gentlemen of the jury: I shall now for argument's sake only, take it for granted, that the fact of killing had been proved upon all the prisoners: you are sensible this is not really true; for as to this point there are several of the prisoners, upon whom this fact is not fixed. But as I shall hereafter take occasion to consider the distinct case of each prisoner, as he is affected by the evidence, I at present choose to avoid confusion, and apply myself to the full strength of the crown; and, upon a supposition that all the prisoners were answerable for the act of any one, see how the prisoners are chargeable by the evidence already offered, with the crime of murder; or rather endeavor to point out to you those facts, appearing by the evidence on the crown side, which will amount in law to a justification, an excuse, or, at least, an extenuation of their offence. For we say, that give the evidence for the king its full scope and force, and our offence is reduced at least to manslaughter; in which case we claim the privilege of that law, by the sentence of which, if guilty, we must suffer the pains of death—a privilege, we can never again claim—a privilege that by no means implies exemption from all punishment: the offender becomes liable to imprisonment for a year—incur a forfeiture of all goods and chattels; and, till he receives the judgments of law, is to all intents a felon, subject to all disabilities and other incidents of a felon. Without taking up time in attending and discussing points, no way pertinent to the present issue, without a tedious recapitulation of circumstances, with which, I take it, we have no more concern than either of you gentlemen; I say, passing over all these matters as foreign to this trial, let us state evidence appearing even from the crown witnesses.

These witnesses, whose testimony I shall not consider in the order they were produced, inform you that, in the former part of the evening a number of soldiers rushed from some of the

lanes near the guard-house, or, as Col. Marshal supposes, from the guard-house itself. But some circumstances he relates as to their dress, may render it doubtful whether he is right in this point. Soldiers on guard have a peculiar regimental habiliment, which they never dare put off; and, if I am rightly instructed, no soldiers but those on duty, are suffered to be at the guard-house at those hours. However, thus much is certain, that being dressed in short jackets or working coats, proves them not to be of that particular party who had mounted guard at this time.

The cry was "where are they—damn them, where are they!" They brandish their weapons and proceed to Cornhill. What those weapons were the witnesses say differently. But it should be mentioned, as we go along, that the soldiers of the twenty-ninth are never allowed to wear swords or cutlasses.

As these soldiers pass down Cornhill, they assault, abuse and attack people. The soldiers in their turn are beaten. One has his wrist broken—and the general cry soon after was—"they are beaten,—they are drove into the barracks!"

Some part of this conduct may hereafter be accounted for, and other parts of it may stand in a very different light. But we are ready to admit that their behavior was altogether unjustifiable—for we don't look upon ourselves as any way concerned in their conduct—conduct, which, if some of the witnesses are not mistaken, seems more like that of madmen and barbarians, than like reasonable creatures. If they acted like savages or ruffians, what is that to us? This evidence, therefore, not applying to this case, we are injured if it has any influence to our prejudice. Being foreign to the issue, we humbly conceive it ought never to have been introduced:—or being introduced, it ought to be rejected in our determining the guilt or innocence of the prisoners.

Mr. Quincy then proceeded to a minute detail of the Crown evidence, pointing out, as he went along, those circumstances that favored the prisoners; and commenting chiefly on those facts which served to refute or invalidate the positions of the Counsel for the Crown; by showing an assault and attack upon the sentry. He then reviewed those parts of the evidence which had a tendency either to prove insult, abuse, or assault and battery of the party; he pointed out the various quarters from which all these, but especially the assault and battery proceeded; and from the facts, time and circumstances testified, inferred the attack to have been on various sides at the same instant. From the noises, violence, and rattling of the guns, he drew other consequences useful to his cause. From the inattention

of some and the forgetfulness of others; from the tumult, fright, confusion and passions in the scene, he made such deductions as might account for the contrariety and seeming incompatibility of the evidence.

He next very particularly stated the evidence for the prisoners, as he had been instructed, it would turn out on examination; and as he opened his evidence, he carefully remarked its conformity to and connection with, many parts of that already exhibited by the Counsel for the King. On the conclusion of the evidence for the prisoners, Mr. Quincy continued:

MAY IT PLEASE YOUR HONORS, AND YOU GENTLEMEN OF THE JURY: We have at length gone through the evidence in behalf of the prisoners. The witnesses have now placed before you that state of facts, from which results our defence. The examination has been so lengthy, that I am afraid some painful sensations arise, when you find that you are now to sit and hear the remarks of counsel. But you should reflect that no more indulgence is shown to the prisoners now on trial, than has ever been shown in all capital causes: the trial of one man has often taken up several days;—when you consider, therefore, that there are eight lives in issue, the importance of the trial will show the necessity of its length. To each of the prisoners different evidence applies, and each of them draw their defence from different quarters.

I stated to you, gentlemen, your duty in opening this cause—do not forget the discharge of it. You are paying a debt you owe the community for your own protection and safety: by the same mode of trial are your own rights to receive a determination; and in your turn a time may come, when you will expect and claim a similar return from some other jury of your fellow subjects.

In opening, I pointed out the dangers to which you were exposed; I trust your own recollection will now preclude a recapitulation of them. The reasons of what I then said, I trust, have, in some measure, appeared; the propriety of some of those observations has been corroborated by succeeding evidence; and you must have traced yourselves, some of those consequences, turning out in evidence, which have had intimate relation, if not their origin, with some or all of those opinions, notions, sentiments, or passions, (call them what you will,) which I took occasion to observe, as clues, aids, and leading-strings, in our intended examination and decision.

How much need was there for my desire, that you should suspend your judgment till the witnesses were all examined? How different is the complexion of the cause? Will not all this serve to show every honest man the little truth to be attained in partial hearings? We have often seen communities complain of ex-

parte testimonies; individuals as well as societies of men are equally susceptible of injuries of this kind: this trial ought to have another effect; it should serve to convince us all of the impropriety, nay, injustice, of giving a latitude in conversation upon topics likely to come under a judicial decision; the criminality of this conduct is certainly enhanced, when such loose sallies and discourses are so prevalent as to be likely to touch the life of a citizen; moreover, there is so little certainty to be obtained by such kind of methods, I wonder we so often find them practised. In the present case, how great was the prepossession against us? And I appeal to you, gentlemen, what cause there now is to alter our sentiments? Will any sober, prudent man, countenance the proceedings of the people in King street,—can any one justify their conduct,—is there any one man or any body of men, who are interested to espouse and support their conduct?

Surely, no! But our inquiry must be confined to the legality of their conduct, and here can be no difficulty. It was certainly illegal, unless many witnesses are directly perjured: witnesses, who have no apparent interest to falsify,—witnesses who have given their testimony with candor and accuracy,—witnesses, whose credibility stands untouched,—whose credibility the Counsel for the King do not pretend to impeach, or hint a suggestion to their disadvantage.

I say, gentlemen, by the standard of the law are we to judge the actions of the people who were the assailants, and those who were the assailed and then on duty. And here, gentlemen, the rule we formerly laid down, takes place. To the facts, gentlemen, apply yourselves. Consider them as testified; weigh the credibility of the witnesses—balance their testimony—compare the several parts of it—see the amount of it;—and then according to your oath—"make true deliverance according to your evidence." That is, gentlemen, having settled the facts, bring them truly to the standard of the law; the king's judges, who are acquainted with it, who are presumed best to know it, will then inspect this great standard of right and wrong, truth and justice; and they are to determine the degree of guilt to which the fact rises.

But before we come to those divisions of inquiry, under which I intend to consider the evidence, let me once more carefully distinguish between the transactions in Cornhill and those by the custom-house.

The conduct of the soldiers in Cornhill may well be supposed to have exasperated the minds of all who beheld their behavior. Their actions accumulated guilt as it flew—at least, we may well suppose, the incensed people who related them, added new colors to the scene. The flame of resentment imperceptibly enkindles, and a common acquaintance with human nature will show, that it is no extravagant supposition to imagine many a moderate man might at such

a season, with such sentiments, which I have more than once noticed,—hearing such relations and complaints; I say, do I injure any one, in supposing that, under all these circumstances a very moderate person, who in ordinary matters acted with singular discretion, should now be drawn imperceptibly away, or rather transported into measures, which in a future moment he would condemn and lament? What more natural supposition than to suppose many an honest mind might at this time fluctuate thus? The soldiers are here—we wish them away; we did not send for them; they have cut and wounded the peaceable inhabitants, and it may be my turn next. At this instant of time he has a fresh detail of injuries: resentment redoubles every successive moment—huzza! for the main guard! we are in a moment before the custom-house. No time is given for recollection. We find from the king's evidence and from our own, the cry was, "Here is a soldier!" not here is the soldier who has injured us—here is the fellow who wounded the man in Cornhill. No, the reasoning, or rather ferment, seems to be, the soldiers have committed an outrage—we have an equal right to inflict punishment—or rather revenge, which they had to make an assault. They said right, but never considered that those soldiers had no right at all. These are sentiments natural enough to persons in this state of mind: we can easily suppose even good men thinking and acting thus. Very similar to this is the force of Dr. Hiron's testimony, and some others. But our inquiry is, what says the law? We must calmly inquire whether this, or any thing like it, is countenanced by the law. What is natural to the man—what are his feelings are one thing: what is the duty of the citizen, is quite another. Reason must resume her seat, and then we shall hear and obey the voice of the law.

The law indulges no man in being his own avenger. Early in the history of jurisprudence we find the sword taken from the party injured and put into the hands of the magistrate. Were not this the case, punishment would know no bounds in extent or duration. Besides, it saps the very root of distributive justice, when any individual invades the prerogative of law, and snatches from the civil magistrate the balance and the rod. How much more are the pillars of security shaken, when a mixed body, assembled as those in King street, assume the province of justice, and invade the rights of the citizen? For it must not be forgot that the soldier is a citizen, equally entitled with us all to protection and security. Hence all are alike obliged to pay obedience to the law; for the price of this protection is that of obedience.

Let it not be apprehended that I am advancing a doctrine that a soldier may attack an inhabitant, and he not allowed to defend himself. No, gentlemen, if a soldier rush violently through the street and presents a weapon of death in a striking posture, no doubt the person assailed may defend himself, even to taking the

life of the assailant. Revenge and a sense of self-preservation, instantly take possession of the person thus attacked; and the law goes not upon the absurd supposition that a person can in these circumstances unman himself. Hence we find a husband, taking his wife in the act of adultery, instantly seizes a deadly weapon and slays the adulterer. It is not murder. Nay, a fillip upon the nose or forehead, in anger, is supposed by the law to be sufficient provocation to reduce killing to manslaughter. It is, therefore, upon principles like these—principles upon which those who now bear the hardest against us, at other times so much depend; it is, I say, upon the right of self-defence and self-preservation, we rely for our acquittal.

Here again, it should be kept in view, that whenever a party injuring has escaped by flight, and time sufficient for the passions to cool, in judgment of law, hath elapsed, however great the injury, the injured party must have recourse to law for his redress. Such is the wisdom of the law; of that law, than which we are none of us to presume ourselves wiser; of that law which is found in the experience of ages, and which in condescension to the infirmities of flesh and blood (but to nothing else) extenuates the offence. For "no man," says the learned judge Foster, "under the protection of the law is to be the avenger of his own wrongs. If they are of such a nature for which the laws of society will give him an adequate remedy, thither he ought to resort. But be they of what nature soever, he ought to bear his lot with patience, and remember that vengeance belongeth to the Most High."\* Now, gentlemen, those whoever they were, who committed the outrage in Cornhill, had absconded; the soldiers, who are supposed to have done them, were confined in their barracks. People were repeatedly told this, and assured by the military officers, that they should not go unpunished. But what followed? Are all present appeased? We are constrained by the force of the evidence, to affirm they were not. But to get regular and right ideas, we must consider all the commotions of the season, and endeavor to come at truth by analyzing the evidence and arranging it under distinct heads of inquiry.

After a further consideration of the evidence in the case, Mr. Quincy remarked:

**MAY IT PLEASE YOUR HONORS AND YOU GENTLEMEN OF THE JURY:** After having thus gone through the evidence, and considered it as applicatory to all and every of the prisoners, the next matter in order seems to be the consideration of the law pertinent upon this evidence.

And here, gentlemen, let me again inform you, that the law which is to pass upon these prisoners, is a law adapting itself to the human species, with all their feelings, passions and

\* Crown Law, 296.

infirmities: a law which does not go upon the absurd supposition, that men are stocks and stones; or that in the fervor of the blood, a man can act with the deliberation and judgment of a philosopher. No! gentlemen;—the law supposes that a principle of resentment, for wise and obvious reasons, is deeply implanted in the human heart; and not to be eradicated by the efforts of State policy. It, therefore, in some degree, conforms itself to all the workings of the passions, to which it pays a great indulgence, so far as not to be wholly incompatible with the wisdom, good order, and the very being of government.

Keeping, therefore, this full in view, let us take once more a very brief and cursory survey of matters supported by the evidence. And here let me ask sober reason—What language more opprobrious? What actions more exasperating, than those used on this occasion? Words, I am sensible, are no justification of blows, but they serve as the grand clues to discover the temper and the designs of the agents; they serve also to give us light in discerning the apprehensions and thoughts of those who are the objects of abuse.

“You lobster,” “you bloody-back,” “you coward,” and “you dastard,” are but some of the expressions proved. What words more galling? What more cutting and provoking to a soldier? To be reminded of the color of his garb, by which he was distinguished from the rest of his fellow-citizens; to be compared to the most despicable animal that crawls upon the earth, was touching indeed a tender point. To be stigmatized with having smarted under the lash, at the halbert, to be twitted with so infamous an ignominy; which was either wholly undeserved, or a grievance which should never have been repeated;—I say to call up and awaken sensations of this kind, must sting even to madness. But accouple these words with the succeeding actions,—“You dastard,”—“you coward!” A soldier and a coward! This was touching (with a witness) “the point of honor, and the pride of virtue.” But while these are as yet fomenting the passions, and swelling the bosom, the attack is made; and probably the latter words were reiterated at the onset; at least, were yet sounding in the ear. Gentlemen of the jury, for heaven’s sake, let us put ourselves in the same situation! Would you not spurn at that spiritless institution of society, which tells you to be a subject at the expense of your manhood!

But does the soldier step out of his ranks to seek his revenge? Not a witness pretends it. Did not the people repeatedly come within the points of their bayonets, and strike on the muzzles of the guns? You have heard the witness.

Does the law allow one member of the community to behave in this manner towards his fellow-citizen, and then bid the injured party be calm and moderate? The expressions from one party were—“Stand off, stand off!” “I

am upon my station.”—“if they molest me upon my post, I will fire.” “By God, I will fire!” “Keep off!” These were words likely to produce reflection and procure peace. But had the words on the other hand a similar tendency? Consider the temper prevalent among all parties at this time. Consider the then situation of the soldiery; and come to the heat and pressure of the action. The materials are laid, the spark is raised, the fire enkindles, the flame rages, the understanding is in wild disorder, all prudence and true wisdom are utterly consumed. Does common sense, does the law expect impossibilities? Here, to expect equanimity of temper, would be as irrational as to expect discretion in a madman. But was any thing done on the part of the assailants, similar to the conduct, warnings, and declarations of the prisoners? Answer, for yourselves, gentlemen! The words reiterated all around, stabbed to the heart;—the actions of the assailants tended to a worse end; to awaken every passion of which the human breast is susceptible; fear, anger, pride, resentment, revenge, alternately take possession of the whole man. To expect, under these circumstances, that such words would assuage the tempest, that such actions would allay the flames;—you might, as rationally, expect the inundations of a torrent would suppress a deluge; or rather that the flames of *Ætna* would extinguish a conflagration!

Prepare, gentlemen of the jury, now to attend to that species of law, which will adapt itself to this trial, with all its singular and aggravating circumstances. A law full of benignity, full of compassion, replete with mercy.

And here, gentlemen, I must, agreeable to the method we formerly adopted, first tell you by what law the prisoners are not to be tried, or condemned. And they most certainly are not to be tried by the Mosaic law: a law, we take it, peculiarly designed for the government of a peculiar nation, who being in a great measure under a theocratical form of government, its institutions cannot, with any propriety, be adduced for our regulation in these days. It is with pain, therefore, I have observed any endeavor to mislead our judgment on this occasion; by drawing our attention to the precepts delivered in the days of Moses; and by disconnected passages of Scriptures, applied in a manner foreign to their original design or import, there seems to have been an attempt to touch some peculiar sentiments, which we know are thought to be prevalent: and in this way, we take it, an injury is likely to be done, by giving the mind a bias, it ought never to have received; because it is not warranted by our laws.

We have heard it publicly said of late, oftener than formerly, “Whosoever sheddeth man’s blood, by man shall his blood be shed.” This is plainly, gentlemen, a general rule which, like all others of the kind, must have its exceptions. A rule which if taken in its strict literal lati-

tude would imply, that a man killing another in self-defence, would incur the pains of death. A doctrine which no man in his senses would ever embrace; a doctrine that certainly never prevailed under the Mosaic institution. For we find the Jews had their six cities of refuge, to which the man-slayer might flee, from the avenger of blood; and something analogous to this (if it did not originate from it) is our benefit of clergy.

And so, that "the murderer shall flee to the pit," comes under the same consideration. And when we hear it asked, as it very lately has been "who *dare* stay him?" I answer, if the laws of our country stay him, you ought to do likewise; and every good subject dares to do what the law allows. But the very position is begging the question; for the question now in issue is, whether either of the prisoners is a murderer, in the sense of our laws? for you recollect, that what is murder and what not, is a question of law, arising upon facts stated and allowed.

But to go on: "You shall take no satisfaction for the life of a murderer, which is guilty of death." Here again is a begging of the question; and moreover, the words, "guilty of death," if rightly rendered from the original, must be one of those general rules I just now mentioned, which always have their exceptions. But these words seem to be wrongly translated; for in the margin of our great Bible, we find them rendered "faulty to die." Against a position of this kind we have no objection. If we have committed a fault, on which our laws inflict punishment of death, we must suffer. But what fault we have committed, you are to inquire: or rather you, gentlemen, are to find the facts proved in Court against us, and the judges are to see and consider what the law pronounces touching our offence, and what punishment is thereby inflicted as a penalty.

In order to come at the whole law resulting from the facts which have been proved, we must inquire into the legality of the assemblies. For such is the wisdom and policy of the law, that if any assembly be lawful, each individual of that assembly is answerable only for his own act, and not for any other. On the contrary, if an assembly be unlawful, the act of any one of the company, to the particular purpose of assembling, is chargeable on all. This is law which no lawyer will dispute: it is a law founded in the security of the peace of society, and however little considered by people in general, it ought now steadily to be kept in mind.

Was the assembly of the soldiers lawful?

For what did the soldiers assemble?

Was the sentinel insulted and attacked?

Did he call for assistance, and did the party go to assist him?

Was it lawful for them so to do?

Were the soldiers when thus lawfully assembled, assaulted, &c., by a great number of people assembled, &c.?

Was this last assembly lawful?

Was any thing done by this unlawful assembly, that will in law justify, excuse, or extenuate, the offence of killing, so as to reduce it to manslaughter?

Was the killing justifiable; or rather was it justifiable self-defence?

Was the killing excusable; or rather was it self-defence, culpable—but through the benignity of the law excusable?

Was the killing felonious: if felonious, was it with or without malice?

Under each of these heads of inquiry, in their order, Mr. Quincy arranged his arguments: and as he separated and compared, and settled the facts, he applied the law with explanatory comments. After which, he concluded his argument as follows:

MAY IT PLEASE YOUR HONORS, AND YOU, GENTLEMEN OF THE JURY: I have now gone through those authorities in law, which I thought pertinent to this trial. I have been thus lengthy, not for the information of the Court, but to satisfy you gentlemen, and all who may chance to hear me, of that law, which is well known to those of us, who are conversant in courts, but not so generally known or attended to by many, as it ought to be—a law which extends to each of us, as well as to any of the prisoners; for it knows no distinction of persons.

And the doctrines which have been thus laid down are for the safeguard of us all. Doctrines which are founded in the wisdom and policy of ages; which the greatest men who ever lived, have adopted and contended for. Nay, the matter has been carried by very wise men, much further than we have contested for. And that you may not think the purport of the authorities read are the rigid notions of a dry system, and the contracted decisions of municipal law, I beg leave to read to you a passage from a very great theoretic writer—a man whose praises have resounded through all the known world, and probably will through all ages—whose sentiments are as free air, and who has done as much for learning, liberty, and mankind, as any of the sons of Adam—I mean the sagacious Mr. Locke. He will tell you gentlemen, in his *Essay on Government*, "That all manner of force without right, puts man in a state of war with the aggressor; and of consequence, that being in such a state of war, he may lawfully kill him who put him under this unnatural restraint." According to this doctrine, we should have nothing to do but inquire whether here was "force without right?" if so, we were in such a state, as rendered it lawful to kill the aggressor, who put us under so unnatural a restraint.

Few, I believe, will say, after hearing all this evidence, that we were under no "unnatural restraint." But we don't want to extend matters so far. We cite this author to show the

world, that the greatest friends to their country, to universal liberty, and the immutable rights of all men, have held tenets and advanced maxims more favorable to the prisoners at the bar. And although we should not adopt the sentiments of Mr. Locke, in their most extensive latitude, yet there seems to be something very analogous to his opinion, which is countenanced in our laws.

There is a spirit which pervades the whole system of English jurisprudence, which inspires a freedom of thought, speech, and behavior. Under a form of government like ours, it would be in vain to expect that pacific, timid, obsequious, and servile temper, so predominant in more despotic governments. From our happy constitution there results its very natural effects—an impatience of injuries, and a strong resentment of insults; (and a very wise man has said, "He who tamely beareth insults inviteth injuries.") Hence, I take it, that attention to the "feelings of humanity," to "humanity and imperfection," "the infirmities of flesh and blood;" that attention to "the indelible rights of mankind;" that lenity to "the passions of men;" that "benignity and condescension of the law," so often repeated in our books.

And, indeed, if this were not the case, the genius of our civil constitution, and the spirit of our municipal law would be repugnant: that prime defect in any political system—that grand solecism in State policy.

GENTLEMEN OF THE JURY: This cause has taken up much of your time, and is likely to take up so much more, that I must hasten to a close. Indeed, I should not have troubled you, by being thus lengthy, but from a sense of duty to the prisoners; they, who, in some sense, may be said to have put their lives in my hands; they, whose situation was so peculiar, that we have necessarily taken up more time than ordinary cases require. They, under all these

circumstances, placed a confidence it was my duty not to disappoint; and which I have aimed at discharging with fidelity. I trust you, gentlemen, will do the like; that you will examine and judge with a becoming temper of mind; remembering that they who are under oath to declare the whole truth, think and act very differently from by-standers, who, being under no ties of this kind, take a latitude, which is by no means admissible in a court of law.

I cannot close this cause better, than by desiring you to consider well the genius and spirit of the law, which will be laid down, and to govern yourselves by this great standard of truth. To some purposes, you may be said, gentlemen, to be ministers of justice; and "ministers," says a learned judge, "appointed for the ends of public justice, should have written on their hearts the solemn engagements of his majesty, at his coronation, to cause law and justice in mercy to be executed in all his judgments."

"The quality of mercy is not strained;  
It droppeth like the gentle rain from heaven—  
It is twice blessed;  
It blesses him that gives, and him that takes."

I leave you, gentlemen, hoping you will be directed in your inquiry and judgment, to a right discharge of your duty. We shall all of us, gentlemen, have an hour of cool reflection; when the feelings and agitations of the day shall have subsided; when we shall view things through a different and a much juster medium. It is then we all wish an absolving conscience. May you, gentlemen, now act such a part, as will hereafter ensure it; such a part as may occasion the prisoners to rejoice. May the blessing of those who were in jeopardy of life come upon you—may the blessing of Him who is "not faulty to die," descend and rest upon you and your posterity.

## JENAMIN RUSH, M D.

THE ancestors of Doctor Rush, belonged to the society of Quakers, and emigrated to America under the auspices of William Penn, as early as the year 1683. James Rush, his grandfather, whose occupation was that of a gunsmith, resided on his estate near Philadelphia, and died in the year 1727. His son John, the father of the subject of the present sketch, became possessed of both his trade and his farm, and was distinguished for his industry and an ardent love of agricultural pursuits. He died while his son was but a child, and left him to the care of an affectionate and pious mother. Under her guardianship he received those impressions of religious sentiment, which were so conspicuous through the whole course of his life. In a letter, written a short time previous to his death, he thus expresses the sense of obligation he felt for the early impressions of piety he had received from his parents:—"I have acquired and received nothing from the world, which I prize so highly as the religious principles I inherited from them; and I possess nothing that I value so much as the innocence and purity of their characters."

Doctor Rush was a native of Pennsylvania, and was born on his father's estate, on the twenty-fourth of December, 1745. At the age of nine years he was placed by his mother under the tuition of his maternal uncle, the Rev. Doctor Finley, a man of high literary attainments, and subsequently, President of the college of New Jersey. In this position he remained five years, after which he was removed to college, where he soon became distinguished for his capability, his uncommon progress in his studies, and especially for his eloquence in declamation. During his stay in college he gained the friendship and esteem of all around him, and graduated with honor, and the best wishes of his teachers and classmates.

Having determined to devote his life to the profession of medicine, he commenced a course of study under the direction of Doctor John Redman, at that time an eminent practitioner in the city of Philadelphia. After pursuing his studies in this office, with industry and great enthusiasm for six years, he entered the medical university of Edinburgh, where he received the full benefit of the lectures of the celebrated professors, Munro, Gregory, Black and Cullen; and, in 1768, received the degree of doctor of medicine. From Edinburgh he proceeded to London, where he spent a few months, in attendance upon the hospitals of that city, and in the spring of 1769, having visited Paris, he returned to his native country, and immediately entered upon the practice of his profession. A short time after, he was elected a professor in the medical school, which had then been recently established, by the laudable exertions of Doctors Bond, Morgan, Shippen and Kuhn. In the year 1789, he was chosen the successor of Doctor Morgan to the chair of the theory and practice of physic; and in 1791, upon an union being effected between the college of Philadelphia and the university of Pennsylvania, was appointed professor of the institutes of medicine and clinical practice. On the resignation of the learned and venerable Doctor Kuhn, in 1805, he was chosen to the united professorships of the theory and practice of physic and of clinical medicine, in which station he remained until the close of his life.

At an early period of his life, Doctor Rush made himself acquainted with the political sit-



nation of his country. On the commencement of hostilities between the Colonies and Great Britain, he decided in favor of liberty, and became a firm and energetic opposer of British tyranny, and supporter of equal rights. Associating with all classes through the medium of his profession, his influence was extensive, useful and salutary. In 1776 he was chosen a member of the Continental Congress, and signed the Declaration of Independence. The following year he was appointed physician-general of the military hospital for the middle department, and rendered great service during the whole of the Revolution. In 1787 he was a member of the convention from Pennsylvania for the adoption of the Federal Constitution. The same year he published the *Address to the People of the United States*.

After the establishment of the Federal Government, he withdrew from public life, and devoted himself to the practice of his profession, and the duties of social life. The only office he accepted, as a reward for his many services, was the presidency of the Mint, which position he retained for fourteen years. He was the author of numerous literary, moral and philosophical essays, and several volumes on medical science; among which are his *Medical Inquiries and Observations*, and a *History of the Yellow Fever*. His attachment to his profession was remarkable. Speaking of his approaching dissolution, he said, "When that time shall come, I shall relinquish many attractions to life, and among them a pleasure, which to me, has no equal in human pursuits; I mean that which I derive from studying, teaching, and practising medicine."

Added to the numerous duties of his profession and the various benevolent associations with which he was connected, Doctor Rush was president of the American Society for the Abolition of Slavery, vice-president of the Philadelphia Bible Society, president of the Philadelphia Medical Society, one of the vice-presidents of the American Philosophical Society, and a member of several other institutions both in Europe and America. Wherever he could be useful by counsel, influence or action, he was sure to be found. "The virtues of his heart," says his biographer, "like the faculties of his mind, were in continued exercise for the benefit of his fellow-men. While the numerous humane, charitable, and religious associations of Philadelphia, bear testimony to the philanthropy and piety which animated the bosom of their departed benefactor; let it be remembered, that as with the good Samaritan, the poor were the objects of his peculiar care; and that in the latter, and more prosperous years of his life, one-seventh of his income was expended upon the children of affliction and want.—Dr. Boerhaave said of the poor, that they were his best patients, because God was their paymaster.—Let it also be recorded, that the last act of Doctor Rush was an act of charity, and that the last expression which fell from his lips was an injunction to his son, "Be indulgent to the poor."\* He died on the nineteenth of April, 1813.

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#### TO THE PEOPLE OF THE UNITED STATES.

This address was written by Doctor Rush, and published in the year 1787, previous to the meeting of the Federal Convention.

There is nothing more common than to confound the terms of American revolution with those of the late American war. The American war is over: but this is far from being the case with the American revolution. On the contrary, nothing but the first act of the great drama is closed. It remains yet to establish and perfect our new forms of government: and

to prepare the principles, morals, and manners of our citizens, for these forms of government, after they are established and brought to perfection.

The confederation, together with most of our State constitutions, were formed under very unfavorable circumstances. We had just emerged from a corrupted monarchy. Although we understood perfectly the principles of liberty, yet most of us were ignorant of the forms and combinations of power in republics. Add to this, the British army was in the heart of our country, spreading desolation wherever it went: our resentments, of course, were awakened. We detested the British name, and unfortu-

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\* Doctor David Hosack's Discourse, at the College of Physicians and Surgeons, New York, 1813.

nately refused to copy some things in the administration of justice and power, in the British government, which have made it the admiration and envy of the world. In our opposition to monarchy, we forgot that the temple of tyranny has two doors. We bolted one of them by proper restraints; but we left the other open, by neglecting to guard against the effects of our own ignorance and licentiousness.

Most of the present difficulties of this country arise from the weakness and other defects of our governments.

My business at present shall be, only to suggest the defects of the confederation. These consist—1st. In the deficiency of coercive power. 2d. In a defect of exclusive power to issue paper money, and regulate commerce. 3d. In vesting the sovereign power of the United States in a single legislature: and, 4th. In the too frequent rotation of its members.

A convention is to sit soon for the purpose of devising means of obviating part of the two first defects that have been mentioned. But I wish they may add to their recommendations to each State, to surrender up to Congress their power of emitting money. In this way, a uniform currency will be produced, that will facilitate trade, and help to bind the States together. Nor will the States be deprived of large sums of money by this means, when sudden emergencies require it; for they may always borrow them, as they did during the war, out of the treasury of Congress. Even a loan office may be better instituted in this way, in each State, than in any other.

The two last defects that have been mentioned, are not of less magnitude than the first. Indeed, the single legislature of Congress will become more dangerous, from an increase of power, than ever. To remedy this, let the supreme federal power be divided, like the legislatures of most of our States, into two distinct, independent branches. Let one of them be styled the Council of the States, and the other the Assembly of the States. Let the first consist of a single delegate—and the second, of two, three, or four, delegates, chosen annually by each State. Let the president be chosen annually by the joint ballot of both Houses; and let him possess certain powers, in conjunction with a privy council, especially the power of appointing most of the officers of the United States. The officers will not only be better, when appointed this way, but one of the principal causes of faction will be thereby removed from Congress. I apprehend this division of the power of Congress will become more necessary, as soon as they are invested with more ample powers of levying and expending public money.

The custom of turning men out of power or office, as soon as they are qualified for it, has been found to be as absurd in practice, as it is virtuous to dismiss a general—a physician—or even a domestic, as soon as they have acquired knowledge sufficient to be useful to us, for the

sake of increasing the number of able generals—skilful physicians—and faithful servants!

We do not. Government is a science, and can never be perfect in America until we encourage men to devote not only three years, but their whole lives to it. I believe the principal reason why so many men of abilities object to serving in Congress, is, owing to their not thinking it worth while to spend three years in acquiring a profession, which their country immediately afterwards forbids them to follow.

There are two errors or prejudices on the subject of government in America, which lead to the most dangerous consequences.

It is often said, "that the sovereign and all other power is seated in the people." This idea is unhappily expressed. It should be—"all power is derived from the people,"—they possess it only on the days of their elections. After this, it is the property of their rulers; nor can they exercise or resume it, unless it be abused. It is of importance to circulate this idea, as it leads to order and good government.

The people of America have mistaken the meaning of the word sovereignty; hence each State pretends to be sovereign. In Europe, it is applied only to those states which possess the power of making war and peace—of forming treaties, and the like. As this power belongs only to Congress, they are the only sovereign power in the United States.

We commit a similar mistake in our ideas of the word independent. No individual State, as such, has any claim to independence. She is independent only in a union with her sister States in Congress.

To conform the principles, morals, and manners of our citizens, to our republican forms of government, it is absolutely necessary, that knowledge of every kind should be disseminated through every part of the United States.

For this purpose, let Congress, instead of laying out half a million of dollars, in building a federal town, appropriate only a fourth of that sum, in founding a federal university. In this university, let every thing connected with government, such as history—the law of nature and nations—the civil law—the municipal laws of our country—and the principles of commerce—be taught by competent professors. Let masters be employed, likewise, to teach gunnery—fortification—and every thing connected with defensive and offensive war. Above all, let a professor of, what is called in the European Universities, economy—be established in this federal seminary. His business should be to unfold the principles and practice of agriculture and manufactures of all kinds, and to enable him to make his lectures more extensively useful, Congress should support a travelling correspondent for him, who should visit all the nations of Europe, and transmit to him, from time to time, all the discoveries and improvements that are made in agriculture and manufactures. To this seminary, young men should be encouraged to repair, after complet-

ing their academical studies in the colleges of their respective States. The honors and offices of the United States should, after a while, be confined to persons who had imbibed federal and republican ideas in this university.

For the purpose of diffusing knowledge, as well as extending the living principle of government to every part of the United States—every State—city—county—village—and township in the Union, should be tied together by means of the post-office. This is the true non-electric wire of government. It is the only means of conveying heat and light to every individual in the federal commonwealth. "Sweden lost her liberties," says the Abbe Raynal, "because her citizens were so scattered, that they had no means of acting in concert with each other." It should be a constant injunction to the post-masters, to convey newspapers free of all charge for postage. They are not only the vehicles of knowledge and intelligence, but the sentinels of the liberties of our country.

The conduct of some of those strangers, who have visited our country, since the peace, and who fill the British papers with accounts of our distresses, show as great a want of good sense, as it does of good nature. They see nothing but the foundations and walls of the temple of liberty; and yet they undertake to judge of the whole fabric.

Our own citizens act a still more absurd part, when they cry out, after the experience of three or four years, that we are not proper materials for republican government. Remember, we assumed these forms of government in a hurry, before we were prepared for them. Let every man exert himself in promoting virtue and knowledge in our country, and we shall soon become good republicans. Look at the steps by which governments have been changed, or rendered stable in Europe. Read the history of Great Britain. Her boasted government has

risen out of wars, and rebellions, that lasted above six hundred years. The United States are travelling peaceably into order and good government. They know no strife—but what arises from the collision of opinions; and, in three years, they have advanced further in the road to stability and happiness, than most of the nations in Europe have done, in as many centuries.

There is but one path that can lead the United States to destruction; and that is, their extent of territory. It was probably to effect this, that Great Britain ceded to us so much waste land. But even this path may be avoided. Let but one new State be exposed to sale at a time; and let the land office be shut up, till every part of this new State be settled.

I am extremely sorry to find a passion for retirement so universal among the patriots and heroes of the war. They resemble skilful mariners, who, after exerting themselves to preserve a ship from sinking in a storm, in the middle of the ocean, drop asleep, as soon as the waves subside, and leave the care of their lives and property, during the remainder of the voyage, to sailors, without knowledge or experience. Every man in a republic is public property. His time and talents—his youth—his manhood—his old age—nay more, his life, his all, belong to his country.

Patriots of 1774, 1775, 1776—heroes of 1778, 1779, 1780! come forward! your country demands your services! Philosophers and friends to mankind, come forward! your country demands your studies and speculations! Lovers of peace and order, who declined taking part in the late war, come forward! your country forgives your timidity, and demands your influence and advice! Hear her proclaiming, in sighs and groans, in her governments, in her finances, in her trade, in her manufactures, in her morals, and in her manners—"THE REVOLUTION IS NOT OVER!"

## ROBERT R. LIVINGSTON.

CHANCELLOR LIVINGSTON, the subject of the present sketch, was a great grandson of Robert, the first of the Livingston family who emigrated to America, near the end of the seventeenth century. His father, R. R. Livingston, was long a member of the legislature, from the county of Dutchess, a judge of the Supreme Court of the colony of New York, an active patriot at the time of the Stamp-Act difficulties, and a member of the Congress which assembled at New York in 1765. He was upon the Bench at the time of the celebrated appeal of Forsey and Cunningham. His legal opinion in that cause, as recorded in Holt's Gazette, evinces the solidity and correctness of his judgment, and the earnestness of his patriotism. His mother was the daughter and heiress of Colonel Henry Beekman, and eminent alike for piety, benevolence, knowledge, and good sense.

Chancellor Livingston, who inherited his father's name, was born in the city of New York, in 1747. After due preparation he entered Kings, now Columbia College, from which institution he graduated on the twenty-eighth of May, 1765. In an account of the exercises on the occasion of his taking his first degree, is the following notice of him: "In all the exercises, the young gentlemen acquitted themselves equally to their own honor and the general satisfaction of the audience: in particular, Mr. Livingston, whose oration in *Praise of Liberty* was received with general and extraordinary approbation, and did great honor to his judgment and abilities, in the choice of his subject, the justice and sublimity of his sentiments, the elegance of his style, and the graceful propriety of his pronunciation and gesture. And many of the auditors pleased themselves with the hopes that the young orator may prove an able and zealous asserter and defender of the rights and liberties of his country, as well as an ornament to it."\*

He entered upon the study of the law, in the office of William Smith, the colonial historian of New York, and shortly after the completion of his course, was, in 1773, appointed recorder of his native city. The all-absorbing question of the right of the British parliament to impose exacting laws upon the colonists was then agitated, and the young recorder, as well as his illustrious father, was ejected from his official position, for adherence to the cause of the patriots. On the twenty-second day of April, 1775, he was appointed a delegate to represent the colony of New York in the Continental Congress, and took his seat in that body on the fifteenth of the following May. In this assembly he at once became a prominent and influential member, distinguished both for his zeal and great abilities.† On the third of June, 1775, he was appointed, with Richard Henry Lee and Edmund Pendleton, a committee to prepare the *Address to the Inhabitants of Great Britain*, and subsequently, throughout the same year, served on several committees of importance. On the eleventh of June, 1776, he was associated with Jefferson, John Adams, Dr. Franklin, and Roger Sherman, to draft the Declaration of Independence. Leaving Philadelphia a short time after this, he was prevented from signing that instrument. Mr. Livingston remained in New York until 1780, when he was again delegated to Congress. The following year, on the formation of the department of foreign affairs, under the confederation, he

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\* Holt's New York Gazette, or the Weekly Post-Boy, May 30, 1765.

† See Journal of Debates in this Congress, as given in John Adams's Works, 2d volume.

was appointed secretary, which station he occupied until 1783, when he was appointed chancellor of the State of New York, being the first incumbent of that office under the State constitution. In 1788 he was a member of the State convention, which assembled at Poughkeepsie, to adopt or reject the Federal constitution, and his labors to effect its adoption were able and distinguished. He administered the oath of office to General Washington, upon his inauguration as President in 1789. In 1801 he was appointed by Jefferson as minister to the Court of France, and in the important negotiation with that government, which terminated in the acquisition of the territory of Louisiana, was an efficient and successful agent. "After the signing of that treaty the ministers arose," says the Count Marbois, "when Mr. Livingston, expressing the general satisfaction, said, with prophetic sagacity, 'We have lived long, but this is the noblest work of our whole lives. The treaty which we have just signed has not been obtained by art, or dictated by force; equally advantageous to the two contracting parties, it will change vast solitudes into flourishing districts. From this day the United States take their place among the powers of the first rank; the English lose all exclusive influence in the affairs of America. Thus one of the principal causes of European rivalries and animosities is about to cease. The United States will re-establish the maritime rights of all the world, which are now usurped by a single nation. These treaties will thus be a guarantee of peace and concord among commercial States. The instruments which we have just signed, will cause no tears to be shed; they prepare ages of happiness for innumerable generations of human creatures. The Mississippi and Missouri will see them succeed one another, and multiply, truly worthy of the regard of Providence, in the bosom of equality, under just laws, freed from the errors of superstition and the scourges of bad government.' " \*

Fortunately for the interests of mankind, Mr. Livingston became acquainted with Robert Fulton. Entertaining enlarged ideas of the advantages of steam navigation, on the extensive lakes and rivers of the United States, Mr. Livingston had applied himself with great perseverance and expense to the construction of vessels and machinery for that kind of navigation. "As early as 1798," says Colden, in his interesting memoir, "he believed that he had accomplished his object, and represented to the legislature of New York that he was possessed of a mode of applying the steam-engine to propel a boat on new and advantageous principles; but that he was deterred from carrying it into effect, by the uncertainty and hazard of a very expensive experiment, unless he could be assured of an exclusive advantage from it, should it be found successful."

The New York Legislature, in March, 1798, passed an act vesting Mr. Livingston with the exclusive right and privilege of navigating all kinds of boats which might be propelled by the force of steam, on all the waters within the territory or jurisdiction of the State, for the term of twenty years from the passing of the act; upon condition, that he should, within a year, build such a boat, the mean of whose progress should not be less than four miles an hour. Immediately after the passage of this act, Mr. Livingston built a boat of about thirty tons, which was propelled by steam, but being incompetent to fulfil the condition of the law, she was abandoned, and he for a time relinquished the project.†

On his return from France, Mr. Livingston associated himself with Fulton, and engaged in the building of a boat. "This boat began to navigate the Hudson River, in 1807, and its progress through the water was at the rate of five miles an hour."‡ All former experiments had failed, and the genius of Fulton, aided and fostered by the public spirit and discernment of Livingston, created one of the greatest accommodations for the benefit of mankind.§

The last years of Mr. Livingston's life were passed in the retirement of his home, at Clermont, on the Hudson River, where he died on the twenty-sixth of February, 1813.

\* See Doctor John W. Francis's interesting sketch of Chancellor Livingston, in the *National Portrait Gallery*, volume 4.

† Life of Robert Fulton, by his friend Cadwallader D. Colden, page 148.

‡ An historical account of the application of steam for the propelling of boats, by R. R. Livingston, in the *American Medical and Philosophical Register*, vol. 2, page 256.

§ De Witt Clinton's discourse before the *American Academy of Fine Arts*.

## ORATION BEFORE THE CINCINNATI.

Chancellor Livingston delivered the following oration, before the Society of the Cincinnati, of the State of New York,\* at the City Hall of the City of New York, on the fourth of July, 1787.

I could have wished, gentlemen, that the task I am now about to perform, had been assigned to some abler speaker; and in that view, I long since tendered my apology for declining it, and hoped, till lately, that it had been accepted. Disappointed in this hope and unwilling to treat any mark of your favor with neglect, I determined to obey your commands, although I was satisfied, that in the execution of them, I should not answer your expectations. There is a style of eloquence adapted to occasions of this kind, to which I feel myself unequal; a style which requires the glowing imagination of younger speakers, who, coming recently from the schools of rhetoric, know how to dress their sentiments in all its flowery ornaments. The turbulence of the times, since I first entered upon public life, and the necessity they imposed upon those who engaged in them, of attending rather to things than words, will, I fear, render me, if not an useless, at least an unpolished speaker.

If the mind dwells with pleasure on interesting events; if the soul pants to emulate the noble deeds it contemplates; if virtue derives new force from the successful struggles of the virtuous, it is wise to set apart certain seasons, when, freed from meaner cares, we commemorate events which have contributed to the happiness of mankind, or afford examples worthy their imitation. What are we this day called upon to commemorate? Some signal victory, in which the victor weeps the loss of friends, and humanity mourns over the graves of the vanquished? The birth of some prince whom force, fraud, or accident has entitled to a throne? Or even that of some patriot, who has raised the reputation and defended the rights of his country? No, gentlemen, a nobler subject than the splendor of victories, or the birth of princes, demands our attention. We are called upon to commemorate the successful battles of freedom and the birth of nations!

It may be expected, and, indeed, I believe it is usual on such occasions, that I should tread the steps we have taken, from the dawn of oppression to the bright sunshine of independence; that I should celebrate the praise of patriots who have been actors in the glorious scene, and more particularly that I should lead you to the shrines of those that have offered up their lives in support of their principles, and sealed with their blood your charters of freedom. Had I

no other object in view than to amuse you and indulge my own feelings, I should take this path; for what task more delightful than to contemplate the successful struggles of virtue; to see her at one moment panting under the grasp of oppression, and rising in the next with renewed strength, as if, like the giant son of earth, she had acquired vigor from the fall; to see hope and disappointment, plenty and want, defeats and victories, following each other in rapid succession, and contributing, like light and shade, to the embellishment of the piece! What more soothing to the soft and delicate emotions of humanity, than to wander with folded arms, and slow and pensive step, amidst the graves of departed heroes; to indulge the mingled emotions of grief and admiration; at one moment giving way to private sorrow, and lamenting the loss of a friend, a relation, a brother,—in the next, glowing with patriot warmth, gazing with ardor on their wounds, and invoking their spirits, while we ask of heaven to inspire us with equal fortitude! But, however pleasing this task, the desire of being useful impels me, at this interesting moment, to forego this pleasure; to call you from this tender scene, to remind you, that you are the citizens of a free State, to bid you rejoice with Roman pride that those you love have done their duty, to exhort you to crown the glorious work which they have begun. For, alas! my friends, though they have nobly performed the part assigned them, the work is still unfinished and much remains for us to do. It may not, therefore, be improper, amidst the congratulations I make you on this day—this day distinguished in the annals of fame, for the triumph of freedom and the birth of nations, to inquire how far it has been productive of the advantages we might reasonably have expected and where they have fallen short of our expectations.

To investigate the causes that have conduced to our disappointment, two objects demand our attention—our internal and federal governments. Either, to those who are disposed to view only the gloomy side of the picture, will afford sufficient matter for censure, and too much cause of uneasiness. Many desponding spirits, misled by these reflections, have ceased to rejoice in independence, and to doubt whether it is to be considered as a blessing. God forbid, that there should be any such among us: For whatever may be the pressure of our present evils, they will cease to operate, when we resolve to remove them; the remedy is within our reach, and I have sufficient confidence in our own fortitude to hope that it will be applied.

Let those, however, who know not the value of our present situation, contrast it with the state of servitude to which we should have been reduced, had we patiently submitted to the

\* See note at page 267, ante.

yoke of Britain. She had long since seen our ease with envy, and our strength with jealousy. Loaded with debt, she wished to share that affluence which she attributed to her protection, rather than to our industry. Tenacious of her supposed supremacy, she could not be indifferent to those increasing numbers which threatened its subversion.

Avarice and timidity concurred in framing a system of despotism, which, but for our resistance, would have reduced us to the vilest subjection. Having resisted, accommodation was vain; pretences would not have been wanting to ruin those that had been active in opposition. Disputes among ourselves would have been encouraged; and advantages, derived from our disunion, would have enabled her ultimately to obtain her object. No alternative was left, but heaven-born independence or abject submission. We have chosen as became a wise and generous people. Let slaves or cowards disapprove the choice.

Our constitutions are formed to insure the happiness of a virtuous nation. They guard against the tumult and confusion of unwieldy popular assemblies, while they yield to every citizen his due share of power. They preserve the administration of justice pure and unbiassed, by the independence of the judges. They prevent abuses in the execution of the law, by committing the care of enforcing them to magistrates who have no share in making, nor voice in expounding them. In these circumstances, they excel the boasted models of Greece or Rome, and those of all other nations, in having precisely marked out the power of the government and the rights of the people. With us the law is written: no party can justify their errors under former abuses, or doubtful precedents. With these constitutions, I shall be asked, how it has happened that the evils hinted at, continue to exist. I shall endeavor to answer this inquiry, since my object in treating of this subject is to impress upon you the obligations we are under as citizens, as men whose past services entitle us to some weight in the community—zealously to unite in promoting a constitutional reform of every abuse that affects the government.

Our constitutions being purely democratic, the people are sovereign and absolute. The faults of absolute governments are to be charged to the sovereign: in ours, they must be traced back to the people.

If our executive has sufficient energy, if the judicial is competent to the administration of justice; if our legislative is so formed as that no law can pass without due deliberation, all the ends of government are answered, so far as they depend upon the constitution. If still it falls short of expectation, the evils must be sought in the administration: and since every person concerned in that is either mediately or immediately chosen by the people, they may change it at pleasure. What can be devised more perfect than that constitution, which puts

in the power of those, who experience the effects of a mal-administration, to prevent their continuance; not by mad, tumultuous, and irregular acts, as in the ancient republics, but by such as are cool, deliberate, and constitutional. If they still exist, they must be charged to the negligence of the people, who, after violent agitation, have sunk into such a state of torpor and indifference with respect to government, as to be careless into what hands they intrust their dearest rights. When we choose an agent to manage our private affairs, an executor to distribute our estate, we are solicitous about the integrity and abilities of those we intrust: we consult our friends—we make the choice after due deliberation. Is it not astonishing that when we are to elect men whose power extends to our liberty, our property, and our lives, that we should be so totally indifferent that not one in ten of us tenders his vote? Can it be thought that an enlightened people believe the science of government level to the meanest capacity? That experience, application, genius, and education, are unnecessary to those, who are to frame laws for the government of the State? And yet, are instances wanting in which these have been proscribed, and their places supplied by those insidious arts which have rendered them suspected? Are past services the passport to future honors; or have you yourselves, gentlemen, escaped the general obloquy? Are you not calumniated by those you deem unworthy of your society? Are you not even shunned by some who should wear with pride and pleasure this badge of former services?

You have learned in the school of adversity to appreciate character. You are not formed, whoever may direct, to promote measures you disapprove. Men, used to command and to obey, are sensible of the value of government, and will not consent to its debasement. Your services entitle you to the respect and favor of a grateful people. Envy, and the ambition of the unworthy, concur to rob you of the rank you merit.

To these causes we owe the cloud that obscures our internal governments. But let us not despair: the sun of science is beginning to rise, and as new light breaks in upon the minds of our fellow-citizens, that cloud will be dispelled.

Having observed that our internal constitutions are adequate to the purposes for which they were formed, and that the inconveniences we have sometimes felt under them were imputable to causes which it was in our power to remove; I might perhaps add, that the continuance of those evils were proofs of the happiness these governments impart; since, had they not been more than balanced by advantages, they would have pressed with such weight as to have compelled the people to apply the remedy the constitution affords. But, when I turn my eyes to the other great object of a patriot's attention, our federal government,

I confess to you, my friends, I sicken at the sight. Nothing presents itself to my view, but a nerveless council, united by imaginary ties, brooding over ideal decrees, which caprice or fancy is at pleasure to annul or execute! I see trade languish, public credit expire—and that glory which is not less necessary to the prosperity of a nation, than reputation to individuals, a victim to opprobrium and disgrace. Here, my friends, you are particularly interested; for I believe, I should do little justice to the motives that induced you to brave the dangers and hardships of a ten years' war, if I supposed you had nothing more in view, than humble peace and ignominious obscurity. Brave souls are influenced by nobler motives; and I persuade myself, that the rank and glory of the nation you have established, were among the strongest that nerved your arms and invigorated your hearts. Let us not then, my friends, lose sight of this splendid object: having pursued it through fields of blood, let us not relinquish the chase, when nothing is necessary to its attainment but union, firmness, and temperate deliberation.

In times of extreme danger, whoever has the courage to seize the helm, may command the ship: each mariner, distrusting his own skill, is ready to repose upon that of others. Congress, not attending to this reflection, were misled by the implicit respect, that during the war was paid to their recommendations; and, without looking forward to times, when the circumstances which made the basis of their authority, should no longer exist, they formed a constitution adapted only to such circumstances. Weak in itself, a variety of causes have conspired to render it weaker. Some States have totally neglected their representation in Congress, while some others have been inattentive in their choice of delegates, to those qualities which are essential to the support of its reputation—objects of some moment, where authority is founded on opinion only. To these, I am sorry gentlemen, to add a third, which operates with peculiar force in some States—the love of power, of which the least worthy are always the most tenacious. To deal out a portion of it to Congress, would be to share that which some, among those who are elected by popular favor, already find too little for their own ambition. To preserve it, rulers of free States practise a lesson they have received from eastern tyrants: and as these, to preserve the succession, put out the eyes of all that may approach the seat of power, so those strive to blind the people, whose discernment they fear may expel them from it.

I will not wear your patience and my own, by contending with those chimeras they have raised, to fright the people from remedying the only real defect of this government; nor will I dwell upon that wretched system of policy which has sunk the interest and reputation of such States in the great council of America, and drawn upon them the hatred and contempt

of their neighbors. Who will deny that the most serious evils daily flow from the debility of our federal constitution? Who but owns that we are at this moment colonies, for every purpose but that of internal taxation, to the nation, from which we vainly hoped our sword had freed us? Who but sees with indignation, British ministers daily dictating laws for the destruction of our commerce? Who but laments the ruin of that brave, hardy, and generous race of men, who are necessary for its support? Who but feels that we are degraded from the rank we ought to hold among the nations of the earth? Despised by some, maltreated by others, and unable to defend ourselves against the cruel depredations of the most contemptible pirates. At this moment, yes, great God, at this moment, some among those, perhaps, who have labored for the establishment of our freedom, are groaning in barbarian bondage. Hands that may have wielded the sword in our defence, are loaded with chains. Toilsome tasks, gloomy prisons, whips and tortures are the portion of men who have triumphed with us and exulted in the idea of giving being to nations and freedom to unnumbered generations.

These, sirs, these are a few of the many evils that result from the want of a federal government. Our internal constitutions may make us happy at home, but nothing short of a federal one can render us safe or respectable abroad. Let us not, however, in our eagerness to attain one, forget to preserve the other inviolate; for better is distress abroad, than tyranny or anarchy at home. A precious deposit is given into our keeping; we hold in our hands the fate of future generations. While we acknowledge that no government can exist without confidence in the governing power, let us also remember that none can remain free where that confidence is incautiously bestowed.

How, gentlemen, shall I apologize for having obtruded this serious address upon the gayeties of this happy day? I told you, and told you truly, that I was ill qualified to play the holiday orator; and I might have added, that the joy of this day is ever attended, in my mind, with a thousand mingled emotions. Reflection of the past brings to memory a variety of tender and interesting events; while hope and fear, anxiety and pleasure, alternately possess me, when I endeavor to pierce the veil of futurity. But never, never before, have they pressed upon me with the weight they do at present. I feel that some change is necessary; and yet I dread, lest the demon of jealousy should prevent such change, or the restless spirit of innovation should carry us beyond what is necessary. I look round for aid; I see in you a band of patriots, the supporters of your country's rights; I feel myself indebted to you for the freedom we enjoy; I know that your emotions cannot be very different from my own; and I strive, by giving you the same views on these important subjects, to unite your efforts in the



common cause. Let us then preserve pure and perfect those principles of friendship for each other—of love for our country, of respect for the Union, which supported us in our past difficulties. Let us reject the trammels of party, and, as far as our efforts will go, call every man to the post his virtues and abilities entitle him to occupy. Let us watch with vigilant atten-

tion over the conduct of those in power; but let us not, with coward caution, restrain their efforts to be useful; and let us implore that omnipotent Being, who gave us strength and wisdom in the hour of danger, to direct our great council to that happy mean which may afford us respect and security abroad, and peace, liberty, and prosperity at home.

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PURSE AND SWORD.

Much has been said, sir, about the sword and the purse. These words convey very confused ideas on the gentleman's application of them. The honorable member from New York has fully explained their meaning, as applied to the British government. His reasoning was so conclusive that it seems to have carried conviction to every mind. The gentleman from Dutchess, to elude it, has made use of a singular shift. Says he, the general government and state governments form one government. Let us see how this matter stands. The States of Pennsylvania and New York form two distinct governments; but New York, Pennsylvania, and the general government, together form one government. The United States and New York make another government; the United States and Connecticut another, and so on. To the gentleman's optics, these things may be clear; but to me they are utter darkness. We have thirteen distinct governments, and yet they are not thirteen governments, but one government. It requires the ingenuity of St. Athanasius to understand this political mystery. Were the gentleman a minister of the gospel, I might have *faith*; but I confess my reason is much too weak for it. Sir, we are attempting to build one government out of thirteen; preserving, however, the States, as parts of the system, for local purposes, and to give it support and beauty. The truth is, the States, and the United States, have distinct objects. They are both supreme. As to national objects, the latter is supreme; as to internal and domestic objects, the former. I can easily conceive of two joint tenures, and of joint jurisdictions without control. If I wanted an example, I might instance the mine, Mr. Chairman, in which you and others have a joint property and concurrent jurisdiction. But

why should the States hold the purse? How are they to use it? They have not to pay the civil list, to maintain the army or navy. What will they do with it? What is the sword, which the gentlemen talk of? How is Congress to defend us without a sword? You will also keep that. How shall it be handled? Shall we all take hold of it? I never knew, till now, the design of a curious image I have seen at the head of one of our newspapers. I am now convinced that the idea was prophetic in the printer. It was a figure of thirteen hands, in an awkward position, grasping a perpendicular sword. As the arms which supported it were on every side, I could see no way of moving it, but by drawing it through, with the hazard of dangerously cutting the fingers. For my own part, I should be for crying, "hands off!" But this sword of the gentlemen's is a visionary sword—a mere empty pageant; and yet they would never trust it out of the State scabbard, lest it should wound somebody. They wish for checks against what can do no harm. They contend for a phantom. Gentlemen should consider their arguments before they come here. Sir, our reasoning on this ground is conclusive. If it be necessary to trust our defence to the Union, it is necessary that we should trust it with the sword to defend us, and the purse to give the sword effect. I have heard not a shadow of an argument to shake the truth of this. But the gentlemen will talk—it is expected. It is necessary that they should support, in this House, the opinions they have propagated out of doors, but which perhaps they had themselves too hastily formed.\*

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\* From Chancellor Livingston's Speech in the New York Convention for the adoption of the Federal Constitution.

## H. H. BRACKENRIDGE.

THIS eminent judge, poet, and satirical writer, was born near Campbelton, in Scotland, in the year 1748. His father was a poor but respectable farmer, who emigrated with his family to America in the year 1753, and settled on a small leasehold, in York county, Pennsylvania, west of the Susquehanna, and near the borders of Maryland.

Encouraged in his studious efforts by an affectionate and intelligent mother, young Brackenridge, with the assistance of the parish clergyman, who instructed him in Greek and Latin, became competent to teach at the age of fifteen. For that purpose he applied for a situation in a free school in Maryland, and secured the position. His youth exposed him to opposition from some of the older pupils, and his authority was, in one instance, resisted by force, when "he seized a brand from the fire, knocked the rebel down, and spread terror around him." Relinquishing this school, he entered an advanced class in the college of New Jersey, where he supported himself through the course by performing the duties of a tutor. He graduated in 1771, and on taking his degree, in conjunction with Philip Freneau, the "revolutionary poet," delivered a poem in dialogue, on *The Rising Glory of America*. He remained a tutor in the college after graduating, and studied divinity, and subsequently took charge of an academy in Maryland, where he continued several years. On the commencement of the scenes of the Revolution, he wrote a dramatic production, entitled *Bunker's Hill*, which was recited by his pupils, and subsequently printed at Philadelphia.\*

In 1776 Mr. Brackenridge went to Philadelphia, and assumed the editorial department of the *United States Magazine*. An anecdote of his editorship is given by his son, in the interesting memoir of his father. "At one time the magazine contained some severe strictures on the celebrated General Lee, and censured him for his conduct to Washington. Lee, in a rage, called at the office, in company with one or two of his aids, with the intention of assaulting the editor. He knocked at the door, while Mr. Brackenridge, looking out of the upper story window, inquired what was wanting? 'Come down,' said Lee, 'and I'll give you as good a horse-whipping as any rascal ever received.' 'Excuse me, General,' said the other, 'I would not go down for two such favors.'" During the revolutionary war, Brackenridge was a chaplain in the patriot army, and preached political sermons in the camp. On the fifth of July, 1779, he delivered, in Philadelphia, an eulogium on the brave men who had fallen in the contest with Great Britain. This effort will be found in the present volume.

Unable to yield a full assent to all the tenets of the Scotch Presbyterian Church in which he had been educated, Mr. Brackenridge relinquished the profession of theology and commenced the study of law in the office of Samuel Chase, at Annapolis. In 1781, he settled at Pittsburg, west of the Alleghanies, which he deemed favorably situated for rapid growth, and engaged zealously in its improvement. Here he entered the arena of politics, in which he became distinguished as one of the supporters of the acts and principles of the Democratic party. He was

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\* The Poem on the *Rising Glory of America*, before noticed, was published in Philadelphia, in 1771, and *The Battle of Bunker's Hill* was printed at the same place, in 1776. Both of these publications are preserved in the Library of the New York Historical Society.

a participator in the Whiskey Insurrection in western Pennsylvania, in 1794, and, when that affair was over, published an account of it, in which he took pains to vindicate his course. In 1796, he published the first part of his *Modern Chivalry, or the Adventures of Captain Farrago, and Teague O'Regan, his servant*, in which he gives some portions of the experience of his own life; and ten years after published the second part.

In 1799, Mr. Brackenridge "was a supporter of Jefferson and M'Kean," says his son, "an enthusiast in the cause of France, and from his high temperament, incapable of pursuing any thing in moderation. He was also involved in a personal difference with the presiding judge of the court, in which he practised, and fearful that he might be provoked to do something which might be taken advantage of, he resolved to retire from practice. He wrote with the pungency and force of a Junius, and spoke with the inspired eloquence of a Henry; it is therefore not to be wondered at, that he soon became a formidable politician. He purchased types and press, and set up a young man as editor of a paper, which he previously named the *Tree of Liberty*, with a motto from Scripture—*And the leaves of the tree shall be for the healing of the nation*. \* \* \* He wrote a number of things, sometimes in prose and sometimes in verse, which I read with great delight, and often committed to memory. \* \* \* The great majority, both in town and country, was then on the federal side; but fifty republicans could be mustered in Pittsburg, and not all these were entitled to put a ticket into the ballot-box. The success in the elections of M'Kean and Jefferson soon effected a numerical change." By the former Mr. Brackenridge was placed on the bench of the Supreme Court of Pennsylvania, where he presided with ability and honor until his last illness, which closed his career at Carlisle, where he had removed on his appointment as judge, on the twenty-fifth of June, 1816. Judge Brackenridge possessed rare social qualities. "His conversation," says his son, "abounded with wit and eloquence, and original views on every subject. He was an improvisateur of the first order. Jeffrey in one of the numbers of the *Edinburgh Review*, says that Matthews was inferior to him in relating a story. He was entirely different; there was no buffoonery or broad humor, either in the choice of his subject or in his manner. Compared to the stories of Matthews, it was genteel comedy or tragedy compared to broad farce. He generally walked about, and seemed to require this, in order to give full play to his powers. It is remarkable, that what he said on the bench while seated, had nothing of his usual eloquence; and when he was eloquent there, which was but seldom, he rose upon his feet.

"He frequently dictated to me, sometimes chapters for '*Modern Chivalry*,' sometimes essays for various newspapers, chiefly on European politics, with which he was singularly conversant. It was difficult to keep pace with him. He directed the punctuation of every sentence as he went along. He had been in this habit for a great many years. His handwriting had become so bad, that it was almost impossible for any one to decipher it; so much so that a trick was once played upon him by a gentleman who sent back one of his letters which he could not read, first tearing off the signature and putting his own in the place of it: my father attempted in vain to make out the scrawl! He often dictated his verse as well as his prose. I remember when a small boy, having committed to memory some lines on General Wayne, which were composed in bed, and dictated in the morning to one of the students. No one was ever more careless in preserving his compositions. He troubled himself as little about them as he did for the fugitive effusions of his discourse. He once dictated to me a Pindaric ode on hearing the report of the death of Governor M'Kean, which turned out to be false."\* Mr. Brackenridge's gazette publications were collected and published in 1806, and the *Law of Miscellanies*, containing instructions for the study of the law, in 1814.†

\* *Recollections of Places and Persons in the West*, by H. M. Brackenridge, published in 1885.

† The editor is indebted for the material of this sketch, to the Biographical Notice of Judge Brackenridge, by his son, appended to *Modern Chivalry*: edition, 1846: to the sketch in Duyckinck's *Cyclopædia of American Literature*, and the notice in Allen's *Biographical Dictionary*.

## AN EULOGIUM.

This oration in honor "of the brave men who have fallen in the contest with Great Britain," was delivered by Judge Brackenridge, on Monday, the fifth of July, 1779, "before a numerous and respectable assembly of citizens and foreigners in the German Calvinist Church," at Philadelphia:

—Heroes then arose;  
Who, scorning coward self, for others liv'd,  
Toil'd for their ease, and for their safety bled.

THOMSON.

It is the high reward of those who have risked their lives in a just and necessary war,\* that their names are sweet in the mouths of men, and every age shall know their actions. I am happy in having it in my power, before a polite assembly, to express what I think of those who have risked their lives in the war of America. I know my abilities rise not to a level with so great a subject, but I love the memory of the men, and it is my hope, that the affection which I feel, will be to me instead of genius, and give me warm words to advance their praises.

I conceive it as the first honor of these men, that, before they engaged in the war, they saw it to be just and necessary. They were not the vassals of a proud chieftain rousing them, in barbarous times, by the blind impulse of attachment to his family, or engaging them to espouse his quarrel, by the music and entertainment of his hall. They were themselves the chieftains of their own cause, highly instructed in the nature of it, and from the best principles of patriotism, resolute in defence. They had heard the declaration of the Court and Parliament of Great Britain, claiming the authority of binding them in all cases whatsoever. They had examined this claim, and found it to be, as to its foundation, groundless; as to its nature, tyrannical, and in its consequences, ruinous to the peace and happiness of both countries. On this clear apprehension and decided judgment of the cause, ascertained by their own reason, and collected from the best writers, it was the noble purpose of their minds to stand forth and assert it, at the expense of fortune, and the hazard of their lives.

These brave men were not soldiers by profession, bred to arms, and from a habit of military life attached to it. They were men in the easy walks of life; mechanics of the city, merchants of the counting-house, youths engaged in the literary studies, and husbandmen, peaceful cultivators of the soil. Happy in the sociability and conversation of the town, the simplicity and innocence of the country village, or the philosophic ease of academic leisure, and

the sweets of rural life, they wished not a change of these scenes of pleasure, for the dangers and calamities of war. It was the pure love of virtue and of freedom, burning bright within their minds, that alone could engage them to embark in an undertaking of so bold and perilous a nature.

These brave men were not unacquainted with the circumstances of their situation, and their unprepared state of war. Not a bayonet was anvil'd out, not a fire-arm was in their possession. No redoubt was cast up to secure the city, no fort was erected to resist invasion, no gun mounted on the battery, and no vessel launched upon the stream.

The power of Britain, on the other hand, was well known, and by the lightning of her orators, in a thousand writings and harangues, had been thrown, in full force, upon their minds. They were taught to believe her (what indeed she was) old in arts and in arms, and enriched with the spoils of a thousand victories. Embraced with the ocean as her favorite, her commerce was extensive, and she sent her ships to every sea. Abounding in men, her armies were in full force, her fleets were completely manned, her discipline was regular, and the spirit of her enterprise, by sea and land, had, in most cases, insured her successes.

The idea of resistance to the power of Britain was indeed great; but the mighty soul of the patriot drank it in, and, like the eagle on the mountain-top, collected magnanimity from the very prospect of the height from which he meant to soar. Like the steed who swallows the distant ground with his fierceness,\* he attempts the career, and poured himself upon the race.

The patriot quits his easy, independent walk of life, his shop, his farm, his office, and his counting-house, and with every hope and every anxious thought, prepares himself for war. The materials of gunpowder are extracted from the earth; the bayonet is anvil'd out; the fire-arm is manufactured in the shop; the manual exercise is taught; the company is formed in battalion; the battalion is instructed to manœuvre on the field; the brigade is drawn forth; and the standard of defiance is planted on the soil.

Shall I mention the circumstances of the day when the sword was drawn, and the first blood was shed? and shall I trace the progress of the war in the course of five campaigns? The narration would require the space of an entire day. I can mention but the sum of things, and on y tell you that the inroad of the foe has been sustained upon the plain, and the forward and impetuous bands have been driven over the disdaining ground which they had measured in

\* Tacitus.

\* Book of Job.

advance. The hill has been defended, and the repulsed and rallying foe has been taught to understand that the valor of America was worthy of the cause which her freemen have espoused. The wilderness has been surmounted in the march. It has been fought, foot to foot, and point to point, in skirmishes, and night surprises, and in pitched battles, with alternate hope and dubious success. The enemy, beaten in one State, has retired to a second, and beaten in the second, he has returned to the first; beaten in every State, he has sought the water, and, like a sea-monster rolling to the deep, has washed his wounds in the brine of ocean. Rising from the ocean, he has sought the land, and advanced with a slow and suspicious step upon the hostile territory. War is again arisen, and it has been fought from spring to autumn, and from autumn to spring, through the heat of summer and the inclemencies of winter, with unabated ardor and unshaken perseverance. What tract of country has not been marked with the vestiges of war? What ground has not been cut with trenches? What hill has not been covered with redoubts? What plain has not been made the scene of the engagement? What soil of our whole earth has not been sowed with ball?

These have been the toils of the heroes of our army; but the brave men whom we this day celebrate, have added to their toils the loss of life. They have fallen in the contest. These of them in the long and laborious march—these by the fever of the camp. These have fallen when, advancing on the enemy, they have received the bayonet in their breast; or, high in hope, and anxious of victory, they have dropped by the cannon or the musket ball.

For what cause did these brave men sacrifice their lives? For that cause which, in all ages, has engaged the hopes, the wishes, and endeavors of the best of men—the *cause of Liberty*. LIBERTY! thou art indeed valuable—the source of all that is good and great upon the earth! For thee the patriot of America has drawn his sword, and has fought, and has fallen.

What was in our power we have done with regard to the bodies of these men; we have paid them military honors; we have placed them in their native earth; and it is with veneration that we yet view their tombs upon the furzy glade, or on the distant hill. Ask me not the names of these. The muses shall tell you of them, and the bards shall woo\* them to their sons. The verse which shall be so happy as to embrace the name of one of these shall be immortal. The names of these shall be read with those of Pelopidas, Epaminondas, and the worthies of the world. Posterity shall quote them for parallels and for examples. When they mean to dress the hero with the fairest praises, they shall say he was gallant and distinguished in his early fall as Warren; prudent and intrepid as Montgomery; faithful

and generous as Macpherson; he fell in the bold and resolute advance, like Haslet and like Mercer; he saw the honor which his valor had acquired, and fainted in the arms of victory, like Herkimer; having gallantly repulsed the foe, he fell, covered with wounds, in his old age, like Wooster.

The names of these brave men shall be read; and the earth shall be sensible of praise where their bodies are deposited. Hill of Boston,\* where the God of arms gave uncommon valor to the patriot! Here the muses shall observe the night, and hymn heroic acts, and trim their lighted lamps to the dawn of morning. The little babbling mystic brook, shall bear the melody, and stealing with a silver foot, shall tell it to the ocean. Hills within prospect of the York city, where the enemy, rejoicing at his early strength, adventured and fought, or where, refusing the engagement, he fled with precipitation to his ships! On you the tomb of the hero is beheld, and fancy walking round covers it with shades. Grounds in the neighborhood of this city,† where the foreigner shall inquire the field of battle, and the citizen shall say with conscious pride, as if the honor were his own, this is the tomb of Witherspoon; that is the ground where Nash fell! Plains washed by the Ashley and Cooper, and before the walls of Charleston!—Here has the hero fallen, or rather he has risen to eternal honor, and his birth-place shall be immortal. His fame, like a vestal lamp, is lighted up. It shall burn, with the world for its temple—and the fair assemblies of the earth shall trim it with their praise.

Having paid that respect to the memory of these men, which the annual return of this day demanded, it remains that we soothe the grief of those who have been deprived of a father, bereaved of a son, or who have lost a brother, a husband or a lover in the contest. Fathers, whose heroic sons have offered up their lives in the contest; it is yours to recollect, that their lives were given them for the service of their country. Fathers! dismiss every shade of grief; you are happy in having been the progenitor of him who is written with the heroes of his country.

Sons! whose heroic fathers have early left you, and in the conflict of the war, have mixed with departed heroes; be congratulated on the fair inheritance of fame which you are entitled to possess. If it is at all lawful to array ourselves in borrowed honor, surely it is best drawn from those who have acted a distinguished part in the service of their country. If it is at all consistent with the feelings of philosophy and reason to boast of lineal glory, surely it is most allowable in those who boast of it as flowing from such source. We despise the un-instructed mind of that man who shall obtrude upon our ears the ideas of a vain ancestral honor; but we love the youth, and transfer to

\* Pliny.

\* Bunker's Hill.

† Philadelphia.

him the reputation of his father, who, when the rich and haughty citizen shall frown upon him as ignobly descended, shall say, "I had a father who has fallen in the service of his country."

When after times shall speak of those who have risen to renown, I will charge it to the golden-winged and silver-tongued bards, that they recollect and set in order every circumstance; the causes of the war; early and just exertions, the toils, hazardous achievements, noble resolution, unshaken perseverance, unabated ardor; hopes in the worst of times, triumphs of victory; humanity to an enemy.

All these will I charge it, that they recollect and set in order, and give them bright and unsullied to the coming ages. The bards I know will hear me, and you, my gallant countrymen, shall go down to posterity with exceeding honor. Your fame shall ascend on the current of the stream of time. It shall play with the breezes of the morning. Men at rest, in the cool age of life, from the fury of a thousand wars finished by their fathers, shall observe the spreading ensign. They shall hail it, as it waves with variegated glories; and feeling all the warm rapture of the heart, shall give their plaudit from the shores.

## CHARLES PINCKNEY.

THE history of Charles Pinckney, a man whose name is connected with many of the most important transactions in the affairs of the United States, lives almost altogether in tradition, and the few facts that exist relating to his career, are meagre and unsatisfactory. He was born in the year 1758. Owing to the want of schools and universities in the colonies, and in accordance with a custom then prevalent among those who could not afford to send their youth to the educational institutions of the mother country, Mr. Pinckney perfected himself in the branches of a liberal education, under the guidance of a tutor, in his own home. At the commencement of the revolutionary difficulties, he entered the contest in defence of the rights of the colonists, and, although quite a young man, became uncommonly active in urging the strongest resistance to the arbitrary and unjust exactions of the British king and ministry. After the success of the Americans at Saratoga, he was appointed a colonel, and distinguished himself alike by his personal bravery, patriotism, and military knowledge. Like his great co-patriot, Governor Gadsden, "wherever his country placed him, whether in the civil or military department—whether as corporal or colonel," he cheerfully served to the utmost of his ability.

The wife of Colonel Pinckney is distinguished as one of those heroic and self-sacrificing women of the revolution, whose "intrepidity and fortitude lent so able a support to the cause of their country." An incident in her life is recorded in Garden's interesting *Anecdotes of the Revolution*. "A British officer of rank once said to Mrs. Pinckney: 'It is impossible not to admire the intrepid firmness of the ladies of your country. Had your men but half their resolution, we might give up the contest. America would be invincible.'"

Colonel Pinckney was chosen a delegate from South Carolina, to the Federal Convention, which met at Philadelphia in the month of May, 1787. His services in that assembly were able and effective. A few days after the meeting of the convention, he submitted a plan of government, and advocated its adoption by the body with great clearness. His remarks on this subject were published after the close of the convention, and are included in the present collection. In 1789, he was elected governor of South Carolina, succeeding in that office the celebrated patriot and statesman, Thomas Pinckney.\* He continued in this station until 1792, discharging his

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\* Thomas Pinckney was a distant, if any, relation to Charles Pinckney. He was governor of South Carolina during the years 1787, 1788, and 1789, and distinguished himself by his patriotism, zeal, and military talents. Pursuing his studies in Europe, previous to the Revolution, the dawn of hostilities towards his country so soon appeared, than renouncing his professional pursuits, his whole attention was given to the acquisition of military knowledge, and so rapid was his proficiency that the rudiments of discipline were first taught by him to the infantry of the South Carolina line. A mutiny among the troops at an early period of the war, afforded an opportunity of manifesting that firmness and decision, so characteristic of him as a soldier. Persuasion having been first employed, without avail, while other officers indulged in menaces and upbraidings, Pinckney, unawed by their threats, and regardless of personal safety, walked deliberately into the midst of the mutineers, and with a blow of his sabre cut down the ringleader. The effect was instantaneous—the cry for pardon was universal, and the order to disperse obeyed without a murmur. At the battle of Stono-Ferry, and the attack on Savannah, his exertions gained him the highest applause. In 1780, he was wounded and taken prisoner by the British. He was appointed minister to London during the administration of Washington, and returned to America in December, 1796. The same year he was candidate with John Adams in the votes for President and Vice-President. In 1800, he was chosen a member of Congress. He died November 2d, 1823.

trust with fidelity, and to the satisfaction of his fellow-citizens. During his administration, the present constitution of South Carolina went into effect. Again, in 1796, he was chosen governor, and remained in office until his election to the United States Senate, in 1798. Shortly after, Mr Jefferson appointed him ambassador at the court of Spain, on the termination of which charge, he was a third time elevated to the governorship of South Carolina. He died on the twenty ninth of October, 1824.\*

### FEDERAL CONSTITUTION.

A few days subsequent to the meeting of the Federal Convention at Philadelphia, in May, 1787, Mr. Pinckney submitted to that assembly a "Plan of a Federal Constitution,"† which he supported with the following observations, delivered at different times during the debates.‡

**MR. PRESIDENT:** It is perhaps unnecessary to state to the House the reasons which have given rise to this Convention. The critical and embarrassed situation of our public affairs is, no doubt, strongly impressed upon every mind. I well know, it is an undertaking of much delicacy, to examine into the cause of public disorders, but having been for a considerable time concerned in the administration of the Federal System, and an evidence of its weakness, I trust the indulgence of the House will excuse me, while I endeavor to state with conciseness, as well the motives which induced the measure, as what ought, in my opinion, to be the conduct of the convention.

There is no one, I believe, who doubts there is something particularly alarming in the present conjuncture. There is hardly a man in or out of office, who holds any other language. Our government is despised—our laws are robbed of their respected terrors—their inaction is a subject of ridicule—and their exertion, of abhorrence and opposition—rank and office have lost their reverence and effect—our foreign politics are as much deranged, as our domestic economy—our friends are slackened in their affection, and our citizens loosened from their obedience. We know neither how to yield or how to enforce—hardly any thing abroad or at home is sound and entire—disconnection and confusion in offices, in States and in parties, prevail throughout every part of the Union. These are facts universally admitted and lamented.

This state of things is the more extraordinary because it immediately follows the close of a war when we conceived our political happiness was to commence; and because the parties which divided and were opposed to our systems are known to be in a great measure dissolved. No external calamity has visited us—we labor under no taxation that is new or oppressive, nor are we engaged in a war with foreigners, or in disputes with ourselves. To what, then, are we to attribute our embarrassments as a nation? The answer is an obvious one: To the weakness and impropriety of a government founded in mistaken principles—incapable of combining the various interests it is intended to unite and support, and destitute of that force and energy, without which no government can exist.

At the time I pronounce in the most decided terms this opinion of our confederation, permit me to remark that, considering the circumstances under which it was formed—in the midst of a dangerous and doubtful war, and by men totally inexperienced in the operations of a system so new and extensive, its defects are easily to be excused. We have only to lament the necessity which obliged us to form it at that time, and wish that its completion had been postponed to a period better suited to deliberation. I confess myself in sentiment with those who were of opinion that we should have avoided it if possible during the war—that it ought to have been formed by a convention of the States, expressly delegated for that purpose, and ratified by the authority of the people. This indispensable power it wants, and is therefore without the validity a federal constitution ought certainly to have had. In most of the States it has nothing more, strictly speaking, than a legislative authority, and might therefore be said, in some measure, to be under the control of the State legislatures.

Independent of this primary defect of not having been formed in a manner that would have given it an authority paramount to the constitutions and laws of the several States, and rendered it impossible for them to have interfered with its objects or operations, the first principles are destructive and contrary to those maxims of government which have been received and approved for ages.

In a government where the liberties of the people are to be preserved and the laws well

\* Simms' History of South Carolina: Ramsay, Vol. 2; and Allen's Biographical Dictionary,

† See Madison Papers, vol. 5, of Elliot's Debates; pp. 129 and 578.

‡ Observations on the Plan of Government submitted to the Federal Convention in Philadelphia, on the 28th of May, 1787, by Mr. Charles Pinckney, delegate from the State of South Carolina. Delivered at different times in the course of their discussions. New York: printed by Francis Child.



administered, the executive, legislative, and judicial should ever be separate and distinct, and consist of parts mutually forming a check upon each other. The confederation seems to have lost sight of this wise distribution of the powers of government, and to have concentrated the whole in a single unoperative body, where none of them can be used with advantage or effect. The inequality of the principle of representation, where the largest and most inconsiderable States have an equal vote in the affairs of the Union; the want of commercial powers; of a compelling clause to oblige a due and punctual obedience to the confederation; a provision for the admission of new States; for an alteration of the system by a less than unanimous vote; of a general guarantee, and, in short, of numerous other reforms and establishments, convince me, that upon the present occasion, it would be politic in the convention to determine that they will consider the subject *de novo*; that they will pay no farther attention to the confederation than to consider it as good materials, and view themselves as at liberty to form and recommend such a plan as, from their knowledge of the temper of the people and the resources of the States, will be most likely to render our government firm and united. This appears to me far more proper than to attempt the repair of a system not only radically defective in principle, but which, if it was possible to give it operation, would prove absurd and oppressive. You must not hesitate to adopt proper measures, under an apprehension the States may reject them. From your deliberations much is expected; the eyes as well as hopes of your constituents are turned upon the convention; let their expectations be gratified. Be assured that however unfashionable for the moment your sentiments may be, yet, if your system is accommodated to the situation of the Union, and founded in wise and liberal principles, it will in time be consented to. An energetic government is our true policy, and it will at last be discovered and prevail.

Presuming that the question will be taken up *de novo*, I do not conceive it necessary to go into a minute detail of the defects of the present confederation, but request permission to submit, with deference to the House, the draft of a government which I have formed for the Union. The defects of the present will appear in the course of the examination. I shall give each article that either materially varies or is new. I well know the science of government is at once a delicate and difficult one, and none more so than that of republics. I confess my situation or experience have not been such as to enable me to form the clearest and justest opinions. The sentiments I shall offer are the result of not so much reflection as I could have wished. The plan will admit of important amendments. I do not mean at once to offer it for the consideration of the House, but have taken the liberty of mentioning it, because it was my duty to do so.

The first important alteration is that of the principle of representation and the distribution of the different powers of government. In the federal councils, each State ought to have a weight in proportion to its importance; and no State is justly entitled to a greater. A representation is the sign of the reality. Upon this principle, however abused, the Parliament of Great Britain is formed, and it has been universally adopted by the States in the formation of their legislatures. It would be impolitic in us, to deem that unjust, which is a certain and beneficial truth. The abuse of this equality has been censured as one of the most dangerous corruptions of the English constitution; and I hope we shall not incautiously contract a disease that has been consuming them. Nothing but necessity could have induced Congress to ratify a confederation upon other principles. It certainly was the opinion of the first Congress in 1774, to acquire materials for forming an estimate of the comparative importance of each State; for, in the commencement of that session, they gave as a reason, for allowing each colony a vote, that it was not in their power at that time, to procure evidence for determining their importance. This idea of a just representation seems to have been conformable to the opinions of the best writers on the subject, that in a confederated system, the members ought to contribute according to their abilities and have a vote in proportion to their importance. But if each must have a vote, it can be defended upon no other ground, than that of each contributing an equal share of the public burden: either would be a perfect system. The present must ever continue irreconcilable to justice. Montesquieu, who had very maturely considered the nature of a confederated government, gives the preference to the Lycian, which was formed upon this model. The assigning to each State its due importance in the federal councils at once removes three of the most glaring defects and inconveniences of the present confederation. The first is the inequality of representation; the second is, the alteration of the mode of doing business in Congress; that is, voting individually, and not by States; the third is, that it would be the means of inducing the States to keep up their delegations by punctual and respectable appointments. The dilatory and unpleasant mode of voting by States must have been experienced by all who were members of Congress. Seven are necessary for any question, except adjourning, and nine for those of importance. It seldom happens that more than nine or ten States are represented. Hence it is generally in the power of a State or of an individual, to impede the operations of that body. It has frequently happened, and, indeed, lately there have rarely been together upon the floor a sufficient number of States to transact any but the most trifling business. When the different branches of government are properly distributed, so as to make each operate upon the other as a

check, the apportioning the representation according to the weight of the members, will enable us to remove these difficulties, by making a majority of the Houses, when constituted, capable of deciding in all, except a few cases, where a larger number may be thought necessary. The division of the legislative will be found essential, because in a government where so many important powers are intended to be placed, much deliberation is requisite. No possibility of precipitately adopting improper measures ought to be admitted, and such checks should be imposed, as we find, from experience, have been useful in other governments. In the Parliament of Great Britain, as well as in most and the best instituted legislatures of the States, we find not only two branches, but in some a council of revision, consisting of their executive and principal officers of government. This I consider as an improvement in legislation, and have therefore incorporated it as a part of the system. It adds to that due deliberation, without which no act should be adopted; and if in the affairs of a State government these restraints have proved beneficial, how much more necessary may we suppose them in the management of concerns so extensive and important?

The Senate, I propose to have elected by the House of Delegates, upon proportionable principles, in the manner I have stated, which, though rotative, will give that body a sufficient degree of stability and independence. The districts, into which the Union is to be divided, will be so apportioned as to give to each its due weight, and the Senate, calculated in this, as it ought to be in every government, to represent the wealth of the nation. No mode can be devised more likely to secure their independence, of either the people or the House of Delegates, or to prevent their being obliged to accommodate their conduct to the influence or caprice of either. The people, in the first instance, will not have any interference in their appointment, and each class being elected for four years, the House of Delegates, which nominate, must, from the nature of their institution, be changed, before the times of the Senators have expired.

The executive should be appointed septennially, but his eligibility ought not to be limited: He is not a branch of the legislature farther, than as a part of the council of revision, and the suffering him to continue eligible will not only be the means of ensuring his good behavior, but serve to render the office more respectable. I shall have no objection to elect him for a longer term, if septennial appointments are supposed too frequent or unnecessary. It is true that in our government he cannot be clothed with those executive authorities, the chief magistrate of a government often possesses; because they are vested in the legislature and cannot be used or delegated by them in any but the specified mode. Under the new system it will be found essentially necessary to

have the executive distinct. His duties will be to attend to the execution of the acts of Congress by the several States, to correspond with them upon the subject; to prepare and digest in concert with the great departments such business as will come before the legislative at their stated sessions: to acquire, from time to time, as perfect a knowledge of the situation of the Union, as he possibly can, and to be charged with all the business of the home department. He will be empowered, whenever he conceives it necessary, to inspect the departments of foreign affairs, of war, of treasury, and when instituted, of the admiralty. This inspection into the conduct of the departments will operate as a check upon those officers, keep them attentive to their duty, and may be the means in time not only of preventing and correcting errors, but of detecting and punishing mal-practices. He will have a right to consider the principals of these departments as his council, and to acquire their advice and assistance, whenever the duties of his office shall render it necessary. By this means our government will possess what it has always wanted, but never yet had, a cabinet council. An institution essential in all governments, whose situation or connections oblige them to have an intercourse with other powers. He will be the commander-in-chief of the land and naval forces of the United States; have a right to convene and prorogue the legislature upon special occasions, when they cannot agree as to the time of their adjournment; and appoint all officers, except judges and foreign ministers. Independent of the policy of having a distinct executive, it will be found that one on these principles will not create a new expense: The establishment of the President of Congress' household will nearly be sufficient; and the necessity, which exists at present, and which must every day increase, of appointing a secretary for the home department, will then cease. He will remain always removable by impeachment, and it will rest with the legislature, to fix his salary upon permanent principles.

The mode of doing business in the Federal Legislature, when thus newly organized, will be the parliamentary one, adopted by the State legislatures. In a council so important, as I trust the Federal Legislature will be, too much attention cannot be paid to their proceedings. It is astonishing that in a body, constituted as the present Congress, so few inaccuracies are to be seen in their proceedings; for certainly, no assembly can be so much exposed to them as that wherein a resolution may be introduced and passed at once. It is a precipitancy which few situations can justify in deliberative bodies, and which the proposed alteration will effectually prevent.

The 4th article, respecting the extending the rights of the citizens of each State throughout the United States; the delivery of fugitives from justice upon demand, and the giving full faith and credit to the records and proceedings

of each, is formed exactly upon the principles of the 4th article of the present confederation, except with this difference, that the demand of the Executive of a State for any fugitive criminal offender shall be complied with. It is now confined to treason, felony, or other high misdemeanor; but as there is no good reason for confining it to those crimes, no distinction ought to exist, and a State should always be at liberty to demand a fugitive from its justice, let his crime be what it may.

The 5th article, declaring that individual States shall not exercise certain powers, is also founded on the same principles as the 6th of the confederation.

The next is an important alteration of the Federal system, and is intended to give the United States in Congress, not only a revision of the legislative acts of each State, but a negative upon all such as shall appear to them improper.

I apprehend the true intention of the States in uniting is, to have a firm, national government, capable of effectually executing its acts, and dispensing its benefits and protection. In it alone can be vested those powers and prerogatives which more particularly distinguish a sovereign State. The members which compose the superintending government are to be considered merely as parts of a great whole, and only suffered to retain the powers necessary to the administration of their State systems. The idea which has been so long and falsely entertained of each being a sovereign State, must be given up; for it is absurd to suppose there can be more than one sovereignty within a government. The States should retain nothing more than that mere local legislation, which, as districts of a general government, they can exercise more to the benefit of their particular inhabitants, than if it was vested in the Supreme Council; but in every foreign concern as well as in those internal regulations, which respecting the whole ought to be uniform and national, the States must not be suffered to interfere. No act of the Federal Government in pursuance of its constitutional powers ought by any means to be within the control of the State Legislatures; if it is, experience warrants me in asserting they will assuredly interfere and defeat its operation. That these acts ought not therefore to be within their power, must be readily admitted; and if so, what other remedy can be devised than the one I have mentioned. As to specifying that only their acts upon particular points should be subject to revision, you will find it difficult to draw the line with so much precision and exactness as to prevent their discovering some mode of counteracting a measure that is disagreeable to them. It may be said that the power of revision here asked, is so serious a diminution of the State's importance, that they will reluctantly grant it. This, however true, does not lessen its necessity, and the more the subject is examined, the more clearly will it appear. It is agreed that a re-

form of our government is indispensable, and that a stronger federal system must be adopted; but it will ever be found, that let your system upon paper be as complete and as guarded as you can make it, yet still, if the State assemblies are suffered to legislate without restriction or revision, your government will remain weak, disjointed, and inefficient. Review the ordinances and resolutions of Congress for the last five or six years—such, I mean, as they had a constitutional right to adopt—and you will scarcely find one of any consequence that has not, in some measure, been violated or neglected. Examine more particularly your treaties with foreign powers: those solemn national compacts, whose stipulations each member of the Union was bound to comply with. Is there a treaty which some of the States have not infringed? Can any other conduct be expected from so many different legislatures being suffered to deliberate upon national measures? Certainly not. Their regulations must ever interfere with each other, and perpetually disgrace and distract the Federal councils. I must confess I view the power of revision and of a negative as the corner-stone of any reform we can attempt, and that its exercise by Congress will be as safe as it is useful. In a government constituted as this is, there can be no abuse of it. The proceedings of the States which merely respect their local concerns, will always be passed as matters of form, and objections only arise where they shall endeavor to contravene the Federal authority. Under the British Government, notwithstanding we early and warmly resisted their other attacks, no objection was ever made to the negative of the King. As a part of his government, it was considered proper. Are we now less a part of the Federal Government than we were then of the British? Shall we place less confidence in men appointed by ourselves and subject to our recall, than we did in their executive? I hope not. Whatever views we may have of the importance or retained sovereignty of the States, be assured they are visionary and unfounded, and that their true interests consist in concentrating, as much as possible, the force and resources of the Union in one superintending government, where alone they can be exercised with effect. In granting to the Federal Government certain exclusive national powers, you invest all their incidental rights. The term exclusive involves every right or authority necessary to their execution. This revision and negative of the laws is nothing more than giving a farther security to these rights. It is only authorizing Congress to protect the powers you delegate, and prevent any interference or opposition on the part of the States. It is not intended to deprive them of the power of making such laws as shall be confined to the proper objects of State Legislation, but it is to prevent their annexing to laws of this kind, provisions which may in their nature interfere with the regulations of the Federal authority. It will sometimes happen, that a

general regulation which is beneficial to the confederacy, may be considered oppressive or injurious, by a particular State. In a mixed government, composed of so many various interests, it will be impossible to frame general systems, operating equally upon all its members. The common benefit must be the criterion, and each State must, in its turn, be obliged to yield some of its advantages. If it was possible completely to draw the distinguishing line, so as to reserve to the States the legislative rights they ought to retain, and prevent their exceeding them, I should not object; but it will be found exceedingly difficult, for, as I have already observed, leave them only a right to pass an act, without revision or control, and they will certainly abuse it. The only mode that I can think of for qualifying it, is to vest a power somewhere, in each State, capable of giving their acts a limited operation, until the sense of Congress can be known. To those who have not sufficiently examined the nature of our Federal system, and the causes of its present weakness and disorders, this curb upon the State legislatures may perhaps, appear an improper attempt to acquire a dangerous and unnecessary power. I am afraid the greater part of our citizens are of this class, and that there are too few among them, either acquainted with the nature of their own Republic, or with those of the same tendency which have preceded it. Though our present disorders must be attributed in the first instance, to the weakness and inefficiency of our government, it must still be confessed, they have been precipitated by the refractory and inattentive conduct of the States; most of which have neglected altogether the performance of their federal duties, and whenever their State-policy or interests prompted, used their retained sovereignty to the injury and disgrace of the Federal head. Nor can any other conduct be expected, while they are suffered to consider themselves as distinct sovereignties, or in any other light than as parts of a common government. The United States can have no danger so much to dread, as that of disunion; nor has the Federal Government, when properly formed, any thing to fear, but from the licentiousness of its members. We have no hereditary monarchy or nobles, with all their train of influence or corruption, to contend with; nor is it possible to form a Federal Aristocracy. Parties may for a time prevail in the States, but the establishment of an aristocratic influence in the councils of the Union, is remote and doubtful. It is the anarchy, if we may use the term, or rather worse than anarchy, of a pure democracy, which I fear. Where the laws lose their respect, and the magistrates their authority; where no permanent security is given to the property and privileges of the citizens; and no measures pursued but such as suit the temporary interest and convenience of the prevailing parties, I cannot figure to myself a government more truly degrading; and yet, such has been the

fate of all the ancient, and probably will be, of all the modern Republics. The progress has been regular, from order to licentiousness; from licentiousness to anarchy; and from thence to despotism. If we review the ancient confederacies of Greece, we shall find that each of them in their turn, became a prey to the turbulence of their members, who, refusing to obey the Federal head, and upon all occasions insulting and opposing its authority, afforded an opportunity to foreign powers to interfere and subvert them. There is not an example in history, of a confederacy's being enslaved or ruined by the invasions of the supreme authority, nor is it scarcely possible, for depending for support and maintenance upon the members, it will always be in their power to check and prevent its injuring them. The Helvetic and Belgic confederacies, which, if we except the Gryson league, are the only governments that can be called republics in Europe, have the same vices with the ancients. The too great and dangerous influence of the parts—an influence that will sooner or later subject them to the same fate. In short, from their example, and from our own experience, there can be no truth more evident than this, that, unless our government is consolidated, as far as is practicable, by retrenching the State authorities, and concentrating as much force and vigor in the Union, as are adequate to its exigencies, we shall soon be a divided and consequently an unhappy people. I shall ever consider the revision and negative of the State laws, as one great and leading step to this reform, and have therefore conceived it proper, to bring it into view.

The next article proposes to invest a number of exclusive rights, delegated by the present confederation, with this alteration: that it is intended to give the unqualified power of raising troops, either in time of peace or war, in any manner the Union may direct. It does not confine them to raise troops by quotas on particular States, or to give them the right of appointing regimental officers, but enables Congress to raise troops as they shall think proper, and to appoint all the officers. It also contains a provision for empowering Congress to levy taxes upon the States, agreeable to the rule now in use, an enumeration of the white inhabitants, and three-fifths of other descriptions.

The 7th article invests the United States with the complete power of regulating the trade of the Union, and levying such imposts and duties upon the same, for the use of the United States, as shall, in the opinion of Congress, be necessary and expedient. So much has been said upon the subjects of regulating trade and levying an impost, and the States have so generally adopted them, that I think it unnecessary to remark upon this article. The intention is, to invest the United States with the power of rendering our maritime regulations uniform and efficient, and to enable them to raise a revenue for federal purposes, uncon-

trollable by the States. I thought it improper to fix the percentage of the imposts, because it is to be presumed their prudence will never suffer them to impose such duties as a fair trade will not bear, or such as may promote smuggling. But as far as our commerce will bear, or is capable of yielding a revenue, without depressing it, I am of opinion they should have a right to direct. The surrendering to the federal government the complete management of our commerce, and of the revenue arising from it, will serve to remove that annual dependence on the States, which has already so much deceived, and will, should no more effectual means be devised, in the end fatally disappoint us. This article will, I think, be generally agreed to by the States. The measure of regulating trade is nearly assented to by all, and the only objections to the impost being from New York, and entirely of a constitutional nature, must be removed by the powers being incorporated with and becoming a part of the federal system.

The 8th article only varies so far from the present, as in the article of the Post Office, to give the federal government a power not only to exact as much postage as will bear the expense of the office, but also for the purpose of raising a revenue. Congress had this in contemplation some time since, and there can be no objection, as it is presumed, in the course of a few years the Post Office will be capable of yielding a considerable sum to the public treasury.

The 9th article, respecting the appointment of federal courts for deciding territorial controversies between different States, is the same with that in the confederation; but this may with propriety be left to the supreme judicial.

The 10th article gives Congress a right to institute all such offices as are necessary for managing the concerns of the Union; of erecting a federal judicial court for the purposes therein specified; and of appointing courts of Admiralty for the trial of maritime causes in the States respectively. The institution of a federal judicial upon the principles mentioned in this article, has been long wanting. At present there is no tribunal in the Union capable of taking cognizance of their officers who shall misbehave in any of their departments, or in their ministerial capacities out of the limits of the United States. For this, as well as the trial of questions arising on the law of nations, the construction of treaties, or any of the regulations of Congress in pursuance of their powers, or wherein they may be a party, there ought certainly to be a judicial, acting under the authority of the confederacy; for securing whose independence and integrity some adequate provision must be made, not subject to the control of the legislature. As the power of deciding finally in cases of appeal, and all maritime regulations are to be vested in the United States, the courts of admiralty in the several States, which are to be governed altogether by their

regulations and the civil law, ought also to be appointed by them; it will serve as well to secure the uprightness of the judges, as to preserve an uniformity of proceeding in maritime cases throughout the Union.

The exclusive right of coining money—regulating its alloy, and determining in what species of money the common treasury shall be supplied—is essential to assuring the federal funds. If you allow the States to coin money, or emit bills of credit, they will force you to take them in payment for federal taxes and duties, for the certain consequence of either introducing base coin, or depreciated paper, is the banishing specie out of circulation; and though Congress may determine that nothing but specie shall be received in payment of federal taxes or duties, yet, while the States retain the rights they at present possess, they will always have it in their power, if not totally to defeat, yet very much to retard and confuse the collection of federal revenues. The payments of the respective States into the treasury, either in taxes or imposts, ought to be regular and uniform in proportion to their abilities; no State should be allowed to contribute in a different manner from the others, but all alike in actual money. There can be no other mode of ascertaining this than to give to the United States the exclusive right of coining, and determining in what manner the federal taxes shall be paid.

In all those important questions, where the present confederation has made the assent of nine States necessary, I have made the assent of two-thirds of both Houses, when assembled in Congress, and added to the number the regulation of trade, and acts for levying an impost and raising a revenue. These restraints have ever appeared to me proper; and in determining questions whereon the political happiness and perhaps existence of the Union may depend, I think it unwise ever to leave the decision to a mere majority. No acts of this kind should pass, unless two-thirds of both Houses are of opinion they are beneficial, it may then be presumed the measure is right; but when merely a majority determines, it will be doubtful; and in questions of this magnitude, where their propriety is doubtful, it will in general be safest not to adopt them.

The exclusive right of establishing regulations for the government of the militia of the United States, ought certainly to be vested in the federal councils. As standing armies are contrary to the constitutions of most of the States and the nature of our government, the only immediate aid and support that we can look up to, in case of necessity, is the militia. As the several States form one government united for their common benefit and security, they are to be considered as a nation—their militia therefore should be as far as possible national—an uniformity in discipline and regulations should pervade the whole; otherwise, when the militia of several States are required to act together, it will be difficult to combine

their operations, from the confusion a difference of discipline and military habits will produce. Independent of our being obliged to rely on the militia as a security against foreign invasions or domestic convulsions, they are in fact the only adequate force the Union possess, if any should be requisite to coerce a refractory or negligent member, and to carry the ordinances and decrees of Congress into execution. This, as well as the cases I have alluded to, will sometimes make it proper to order the militia of one State into another. At present the United States possess no power of directing the militia, and must depend upon the States to carry their recommendations upon this subject into execution. While this dependence exists, like all their other reliances upon the States for measures they are not obliged to adopt, the federal views and designs must ever be delayed and disappointed. To place therefore a necessary and constitutional power of defence and coercion in the hands of the federal authority, and to render our militia uniform and national, I am decidedly in opinion they should have the exclusive right of establishing regulations for their government and discipline, which the States should be bound to comply with, as well as with their requisitions for any number of militia, whose march into another State the public safety or benefit should require.

In every confederacy of States, formed for their general benefit and security, there ought to be a power to oblige the parties to furnish their respective quotas without the possibility of neglect or evasion;—there is no such clause in the present confederation, and it is therefore without this indispensable security. Experience justifies me in asserting that we may detail as minutely as we can, the duties of the States, but unless they are assured that these duties will be required and enforced, the details will be regarded as nugatory. No government has more severely felt the want of a coercive power, than the United States; for want of it, the principles of the confederation have been neglected with impunity in the hour of the most pressing necessity, and at the imminent hazard of its existence; nor are we to expect they will be more attentive in future. Unless there is a compelling principle in the confederacy, there must be an injustice in its tendency; it will expose an unequal proportion of the strength and resources of some of the States, to the hazard of war in defence of the rest—the first principles of justice direct that this danger should be provided against—many of the States have certainly shown a disposition to evade a performance of their federal duties, and throw the burden of government upon their neighbors. It is against this shameful evasion in the delinquent, this forced assumption in the more attentive, I wish to provide, and they ought to be guarded against by every means in our power. Unless this power of coercion is infused, and exercised when necessary, the States will most assuredly neglect their du-

ties. The consequence is either a dissolution of the Union, or an unreasonable sacrifice by those who are disposed to support and maintain it.

The article empowering the United States to admit new States into the confederacy, is become indispensable, from the separation of certain districts from the original States—and the increasing population and consequence of the western territory. I have also added an article authorizing the United States, upon petition from the majority of the citizens of any State or convention authorized for that purpose, and of the legislature of the State to which they wish to be annexed, or of the States among which they are willing to be divided, to consent to such junction or division, on the terms mentioned in the article. The inequality of the federal members, and the number of small States, is one of the greatest defects of our Union. It is to be hoped, this inconvenience will, in time, correct itself; and that the smaller States, being fatigued with the expense of their State systems, and mortified at their want of importance, will be inclined to participate in the benefits of the larger, by being annexed to and becoming a part of their governments. I am informed sentiments of this kind already prevail; and, in order to encourage propositions so generally beneficial, a power should be vested in the Union, to accede to them whenever they are made.

The Federal Government should also possess the exclusive right of declaring on what terms the privileges of citizenship and naturalization should be extended to foreigners. At present the citizens of one State are entitled to the privileges of citizens in every State. Hence it follows, that a foreigner as soon as he is admitted to the rights of citizenship in one, becomes entitled to them in all. The States differed widely in their regulations on this subject. I have known it already productive of inconveniences, and think they must increase. The younger States will hold out every temptation to foreigners, by making the admission to offices less difficult in their governments, than the older. I believe in some States, the residence which will enable a foreigner to hold any office, will not in others entitle him to a vote. To render this power generally useful, it must be placed in the Union, where alone it can be equally exercised.

The 16th article proposes to declare that if it should hereafter appear necessary to the United States to recommend the grant of any additional powers, that the assent of a given number of the States shall be sufficient to invest them and bind the Union as fully as if they had been confirmed by the legislatures of all the States. The principles of this, and the article which provides for the future alteration of the constitution by its being first agreed to in Congress, and ratified by a certain proportion of the legislatures, are precisely the same; they both go to destroy that unanimity, which, upon these oc-

asions, the present system has unfortunately made necessary;—the propriety of this alteration has been so frequently suggested, that I shall only observe, that it is to this unanimous consent, the depressed situation of the Union is undoubtedly owing. Had the measures recommended by Congress and assented to, some of them by eleven and others by twelve of the States, been carried into execution, how different would have been the complexion of 'public affairs? To this weak, this absurd part of the government, may all our distresses be fairly attributed.

If the States were equal in size and importance, a majority of the legislatures might be sufficient for the grant of any new powers; but disproportioned as they are and must continue for a time, a larger number may now in prudence be required;—but I trust no government will ever again be adopted in this country, whose alteration cannot be effected but by the assent of all its members. The hazardous situation the United Netherlands are frequently placed in on this account, as well as our own mortifying experience, are sufficient to warn us from a danger which has already nearly proved fatal. It is difficult to form a government so perfect as to render alterations unnecessary; we must expect and provide for them. But difficult as the forming a perfect government would be, it is scarcely more so, than to induce thirteen separate legislatures to think and act alike upon one subject;—the alterations that nine think necessary, ought not to be impeded by four—a minority so inconsiderable should be obliged to yield. Upon this principle, the present articles are formed, and are, in my judgment, so obviously proper, that I think it unnecessary to remark farther upon them.

There is also in the articles a provision respecting the attendance of the members of both Houses; it is proposed that they shall be the judges of their own rules and proceedings, nominate their own officers, and be obliged, after accepting their appointments, to attend the stated meetings of the legislature; the penalties under which their attendance is required, are such as to insure it, as we are to suppose no man would willingly expose himself to the ignominy of a disqualification. Some effectual mode must be adopted to compel an attendance, as the proceedings of the government must depend on its formation;—the inconveniences arising from the want of a sufficient representation, have been frequently and severely felt in Congress. The most important questions have, on this account, been delayed, and I believe I may venture to assert, that for six months in the year, they have not lately had such a representation as will enable them to proceed on business of consequence. Punctuality is essential in a government so extensive, and where a part of the members come from considerable distances, and of course, have no immediate calls to divert their attention from the public business, those who are in the vicin-

ity should not be suffered to disappoint them; if the power of compelling their attendance is necessary, it must be incorporated as a part of the constitution which the States will be bound to execute; at present, it is contended that no such authority exists; that the members of Congress are only responsible to the State they represent, and to this may be attributed that shameful remissness in forming the Federal council, which has been so derogating and injurious to the Union. The article I have inserted is intended to produce a reform, and I do not at present discover a mode in which the attendance of the members can be more effectually enforced.

The next article provides for the privilege of the writ of habeas corpus—the trial by jury in all cases, criminal as well as civil—the freedom of the press and the prevention of religious tests as qualifications to offices of trust or emolument. The three first essential in free governments; the last a provision the world will expect from you, in the establishment of a system founded on Republican principles, and in an age so liberal and enlightened as the present.

There is also an authority to the national legislature, permanently to fix the seat of the general government, to secure to authors the exclusive right to their performances and discoveries, and to establish a Federal University.

There are other articles, but of subordinate consideration. In opening the subject, the limits of my present observations would only permit me to touch the outlines; in these I have endeavored to unite and apply, as far as the nature of our Union would permit, the excellencies of such of the State Constitutions as have been most approved. The first object with the convention must be to determine on principle—the most leading of these are, the just proportion of representation, and the arrangement and distribution of the powers of government. In order to bring a system founded on these principles to the view of the convention, I have sketched the one which has just been read—I now submit it with deference to their consideration, and wish, if it does not appear altogether objectionable, that it may be referred to the examination of a committee.

There have been frequent, but unsuccessful, attempts by Congress, to obtain from the States the grant of additional powers, and such is the dangerous situation in which their negligence and inattention have placed the federal concerns, that nothing less than a convention of the States could probably prevent a dissolution of the Union. Whether we shall be so fortunate as to concur in measures calculated to remove these difficulties, and render our government firm and energetic, remains to be proved. A change in our political system is inevitable; the States have wisely foreseen this, and provided a remedy. Congress have sanctioned it. The consequences may be serious should the convention dissolve without coming to some

determination. I dread even to think of the event of a convulsion, and how much the ineffectual assemblage of this body may tend to produce it. Our citizens would then suppose that no reasonable hope remained of quietly removing the public embarrassment, or of providing by a well-formed government for the protection and happiness of the people,—they might possibly turn their attention to effecting that by force, which had been in vain constitutionally attempted.

I ought again to apologize for presuming to intrude my sentiments upon a subject of such

difficulty and importance. It is one that I have for a considerable time attended to. I am doubtful whether the convention will, at first, be inclined to proceed as far as I have intended; but this I think may be safely asserted, that upon a clear and comprehensive view of the relative situation of the Union, and its members, we shall be convinced of the policy of concentrating in the federal head, a complete supremacy in the affairs of government; leaving only to the States such powers as may be necessary for the management of their internal concerns.



## LUTHER MARTIN.

THE ancestors of Luther Martin came originally from England. His father was a worthy and industrious farmer, who, with a brother, emigrated from Piscataqua, in New England, and settled on the Raritan River, in New Jersey, at a time when a greater portion of that colony was a dense wilderness. Luther was born in New Brunswick, in the year 1744. He was the third of nine children. His early days were spent chiefly in the labors of his father's farm; his leisure hours only being devoted to the acquisition of knowledge.

At the age of thirteen years he was placed in a grammar school, where he acquired the rudiments of the Latin language, and, in September, 1762, graduated at the college of New Jersey, with the highest honors of his class. At that institution he laid the foundation of his subsequent greatness. With the other classical exercises at college, he pursued the study of the French and Hebrew languages. The parents of Mr. Martin were poor, and unable to afford a liberal education to any of their sons but Luther, and as an equivalent for the additional labor which his two elder brothers had undergone for the support of his father's family, while he was in college, he conveyed to them a small tract of land which had been granted him by his grandfather for his own support. In speaking of his education, the only inheritance he received from his parents, he remarks, "it is a patrimony, for which my heart beats toward them a more grateful remembrance, than had they bestowed upon me the gold of Peru or the gems of Golconda."\*

Having determined to devote his energies to the profession of the law, he left his home, and shortly after took charge of a school at Queenstown, in Queen Anne's county, Maryland. Here he remained until April, 1770, earnestly devoting himself to the double duty of preceptor and student at law. Among many valuable acquaintances he made here, was Mr. Solomon Wright, who afforded him the advantage of his library, and viewed him as a member of his family. In 1771 he was admitted to the practice of law, and continuing his legal studies until the next year, he went to Williamsburgh, then the chief city of Virginia, where the general court was then in session. Here he mingled in the society of the most distinguished men, among whom were George Mason, John Randolph, George Wyeth, and Patrick Henry.

Soon after, he commenced the practice of his profession in Northampton, Virginia, and its vicinity, and was admitted as an attorney in the courts of Somerset and Worcester, the former of which he chose as a place of residence. His practice here was large and lucrative, amounting, as he informs us, "to about one thousand pounds per annum;" this, however, was somewhat diminished on the commencement of the war of the revolution. His splendid capabilities were at this time fully appreciated, and he was considered "one of the most able lawyers at the bar." As an evidence of his success in practice, the following fact is recorded, that in thirty criminal cases, in which he was employed as counsel, "twenty-nine" of his clients were acquitted.†

In 1774 he was appointed on various committees to oppose the claims and resist the usurpations of the British crown. His services at this time were marked and important, "throughout which," to use his own expression, "not only myself, but many others, did not lie down on

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\* Modern Gratitude, by Luther Martin, of Maryland, page 184.

† National Portrait Gallery. Article Luther Martin.

night on their beds, without the hazard of waking on board a British armed ship, or in the other world." The Howes, on their way to the Chesapeake Bay, published a proclamation, addressed to the people of that part of the United States, against which they were directing their military operations. This proclamation was answered in an address to the Howes, by Mr. Martin. About the same time he published an address *To the Inhabitants of the Peninsula between the Delaware River and the Chesapeake, to the Southward of the British Lines.*

He was appointed attorney-general of the State of Maryland, in February, 1778. In this office the fearlessness of his character, his uncompromising regard for truth and justice, and his extensive legal knowledge, were most strikingly exhibited. As a member of the Federal Convention, in 1787, he opposed the forming of the present constitution of the United States, in its earliest stages, and when it was submitted to the several States for their adoption, he addressed the legislature of Maryland, endeavoring to obtain their disapproval of it.

Associated with R. Goodloe Harper and Joseph Hopkinson, he was engaged, in 1804, in the defence of Judge Chase, then one of the justices of the Superior Court of the United States, who was impeached in the House of Representatives for malfeasance in office. With Judge Chase he had been on terms of intimacy for nearly thirty years, and he viewed him as a friend; "though that circumstance," he said, in his opening argument, "would be a sufficient inducement for me to appear in his defence, I am at this time actuated by superior motives. I consider this cause not only of importance to the respondent and his accusers, but to my fellow-citizens in general (whose eyes are now fixed upon us), and to their posterity, for the decision at this time will establish a most important precedent as to future cases of impeachment." After a powerful and learned argument, Judge Chase was acquitted. In 1807 Mr. Martin was engaged in the defence of Aaron Burr, in his trial for treason, *in preparing the means of a military expedition against Mexico, a territory of the King of Spain, with whom the United States were at peace.* His friendship for Burr and his course at this trial, excited the ill-will of President Jefferson. "Shall we move to commit Luther Martin, as *particeps criminis* with Burr?" says he, in a letter to George Hay, the conductor of the prosecution; "Graybell will fix upon him misprison or treason at least; and at any rate, his evidence will put down at least this unprincipled and impudent federal bull-dog, and add another proof that the most clamorous defenders of Burr are all his accomplices. It will explain why Luther Martin flew so hastily to the 'aid of his honorable friend,' abandoning his clients and their property during a session of a principal court in Maryland."\* Throughout the trial Mr. Martin displayed the warmest friendship for Burr, entering, from day to day, into a recognizance for his appearance before the bar of the court. Burr was acquitted.

In 1814 Mr. Martin was elevated to the Bench of the Court of Oyer and Terminer for the city and county of Baltimore, and four years after, was again qualified as attorney-general of the State, and district attorney of Baltimore, but was prevented from performing the duties of those positions, by declining health. Shortly after this period he was attacked with paralysis, which almost totally destroyed his faculties; and on the evening of the tenth of July, 1826, he died, in the city of New York, at the house of his old friend and client, Aaron Burr, who faithfully paid him the last rites of kindness, in the imbecility of his age, in return for the valuable services which Martin had rendered him when he was in the full vigor and glory of manhood.

"As a lawyer," says his biographer, "Mr. Martin was learned, clear, and solid. His mind was so completely stored with the principles of legal science, and his professional accuracy was so generally acknowledged, that his mere opinion was considered law, and is now deemed sound authority before any American tribunal. His cast of mind was less brilliant than solid. He ordinarily commenced his efforts at the bar with a long and tedious exordium. He seemed to labor amid the vast mass of *general matters* at the commencement of his speeches, sometimes continuing for an hour in a confused essay, and then suddenly springing off upon his track with a cogent and well-compacted argument. \* \* \* He was a man of warm heart and generous feelings; but in the discharge of his official duties he was rigorous and unyielding.†

\* Jefferson's Works, vol. 5, page 99.

† National Portrait Gallery. Article, Luther Martin.

## FEDERAL CONVENTION.

The following information, relative to the proceedings of the General Convention, held at Philadelphia, in 1787, was delivered to the Legislature of the State of Maryland, by Mr. Martin, early in the year 1788. When called upon he addressed the House nearly as follows:\*

Since I was notified of the resolve of this honorable House, that we should attend this day, to give information with regard to the proceedings of the late convention, my time has necessarily been taken up with business, and I have also been obliged to make a journey to the Eastern Shore. These circumstances have prevented me from being as well prepared as I could wish to give the information required. However, the few leisure moments I could spare, I have devoted to refreshing my memory, by looking over the papers and notes in my possession; and shall, with pleasure, to the best of my abilities, render an account of my conduct.

It was not in my power to attend the convention immediately on my appointment. I took my seat, I believe, about the 8th or 9th of June. I found that Governor Randolph, of Virginia, had laid before the convention certain propositions for their consideration, which have been read to this House by my honorable colleague; and I believe he has very faithfully detailed the substance of the speech with which the business of the convention was opened; for, though I was not there at the time, I saw notes which had been taken of it.

The members of the convention from the States came there under different powers; the greatest number, I believe, under powers nearly the same as those of the delegates of this State. Some came to the convention under the former appointment, authorizing the meeting of delegates merely to regulate trade. Those of Delaware were expressly instructed to agree to no system which should take away from the States that equality of suffrage secured by the original articles of confederation. Before I arrived, a number of rules had been adopted to regulate the proceedings of the convention, by one of which, seven States might proceed to business, and consequently four States, the majority of that number, might eventually have agreed upon a system which was to affect the whole Union. By another, the doors were to be shut, and the whole proceedings were to be kept

secret; and so far did this rule extend, that we were thereby prevented from corresponding with gentlemen in the different States upon the subjects under our discussion—a circumstance, sir, which I confess I greatly regretted. I had no idea that all the wisdom, integrity, and virtue of this State, or of the others, were centred in the convention. I wished to have corresponded freely and confidentially with eminent political characters in my own and other States—not implicitly to be dictated to by them, but to give their sentiments due weight and consideration. So extremely solicitous were they that their proceedings should not transpire, that the members were prohibited even from taking copies of resolutions, or extracts of any kind from the journals, without formally moving for, and obtaining permission, by a vote of the convention for that purpose.

You have heard, sir, the resolutions which were brought forward by the honorable member from Virginia. Let me call the attention of this House to the conduct of Virginia when our confederation was entered into. That State then proposed, and obstinately contended, contrary to the sense of, and unsupported by, the other States, for an equality of suffrage, founded on numbers, or some such scale, which should give her, and certain other States, influence in the Union over the rest. Pursuant to that spirit which then characterized her, and uniform in her conduct, the very second resolve is calculated expressly for that purpose—to give her a representation proportioned to her numbers,—as if the want of that was the principal defect in our original system, and this alteration the great means of remedying the evils we had experienced under our present government.

The object of Virginia and other large States, to increase their power and influence over the others, did not escape observation. The subject, however, was discussed with great coolness in the Committee of the Whole House, (for the convention had resolved itself into a Committee of the Whole, to deliberate upon the propositions delivered in by the honorable member from Virginia.) Hopes were formed that the farther we proceeded in the examination of the resolutions, the better the House might be satisfied of the impropriety of adopting them, and that they would finally be rejected by a majority of the committee. If, on the contrary, a majority should report in their favor, it was considered that it would not preclude the members from bringing forward and submitting any other system to the consideration of the convention; and accordingly, while those resolves were the subject of discussion in the Committee of the Whole House, a number of the members who disapproved them were

\* A report of this speech was not taken at the time of its delivery. Subsequently Mr. Martin communicated it, together with a letter, to the Hon. Thomas C. Deye, Speaker of the House of Delegates, and soon after it was published in a pamphlet, with an address to the citizens of the United States, and some remarks relative to a standing army and a bill of rights.

preparing another system, such as they thought more conducive to the happiness and welfare of the States. The propositions originally submitted to the convention having been debated, and undergone a variety of alterations in the course of our proceedings, the Committee of the Whole House, by a small majority, agreed to a report, which I am happy, sir, to have in my power to lay before you. It was as follows:—

"1. *Resolved*, That it is the opinion of this committee, that a national government ought to be established, consisting of a supreme legislative, judiciary, and executive.

"2. That the legislative ought to consist of two branches.

"3. That the members of the first branch of the national legislature ought to be elected by the people of the several States, for the term of three years; to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the national treasury; to be ineligible to any office established by a particular State, or under the authority of the United States, except those particularly belonging to the functions of the first branch, during the term of service, and under the national government, for the space of one year after its expiration.

"4. That the members of the second branch of the legislature ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for a term sufficient to insure their independency, namely, seven years, one-third to go out biennially, to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the national treasury; to be ineligible to any office by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and under the national government, for the space of one year after its expiration.

"5. That each branch ought to possess the right of originating acts.

"6. That the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the confederation, and moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several States, contravening, in the opinion of the legislature of the United States, the articles of union, or any treaties subsisting under the authority of the Union.

"7. That the right of suffrage, in the first branch of the national legislature, ought not to be according to the rule established in the articles of confederation, but according to some equitable rate of representation; namely, in proportion to the whole number of white, and other free citizens and inhabitants, of every age,

sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each State.

"8. That the right of suffrage in the second branch of the national legislature ought to be according to the rule established in the first.

"9. That a national executive be instituted, to consist of a single person, to be chosen by the national legislature for the term of seven years, with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be ineligible a second time, and to be removable on impeachment and conviction of malpractice or neglect of duty; to receive a fixed stipend, by which he may be compensated for the devotion of his time to public service, to be paid out of the national treasury.

"10. That the national executive shall have a right to negative any legislative act, which shall not afterwards be passed unless by two-thirds of each branch of the national legislature.

"11. That a national judiciary be established, to consist of one supreme tribunal, the judges of which to be appointed by the second branch of the national legislature, to hold their offices during good behavior, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

"12. That the national legislature be empowered to appoint inferior tribunals.

"13. That the jurisdiction of the national judiciary shall extend to cases which respect the collection of the national revenue, cases arising under the laws of the United States, impeachments of any national officer, and questions which involve the national peace and harmony.

"14. *Resolved*, That provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government, territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

"15. *Resolved*, That provision ought to be made for the continuance of Congress, and their authority and privileges, until a given day after the reform of the articles of union shall be adopted, and for the completion of all their engagements.

"16. That a republican constitution and its existing laws ought to be guaranteed to each State by the United States.

"17. That provision ought to be made for the amendment of the articles of union whenever it shall seem necessary.

"18. That the legislative, executive, and judiciary powers, within the several States, ought to be bound by oath to support the articles of the union.

"19. That the amendments which shall be offered to the confederation by this convention, ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies, recommended by the legislatures, to be expressly chosen by the people, to consider and decide thereon."

These propositions, sir, were acceded to by a majority of the members of the committee—a system by which the large States were to have not only an inequality of suffrage in the first branch, but also the same inequality in the second branch, or Senate. However, it was not designed the second branch should consist of the same number as the first. It was proposed that the Senate should consist of twenty-eight members, formed on the following scale:—Virginia to send five, Pennsylvania and Massachusetts each four; South Carolina, North Carolina, Maryland, New York, and Connecticut, two each, and the States of New Hampshire, Rhode Island, Jersey, Delaware, and Georgia, each of them one. Upon this plan, the three large States, Virginia, Pennsylvania, and Massachusetts, would have thirteen senators out of twenty-eight—almost one half of the whole number. Fifteen senators were to be a quorum to proceed to business; those three States would, therefore, have thirteen out of that quorum. Having this inequality in each branch of the legislature, it must be evident, sir, that they would make what laws they pleased, however injurious or disagreeable to the other States, and that they would always prevent the other States from making any laws, however necessary and proper, if not agreeable to the views of those three States. They were not only, sir, by this system, to have such an undue superiority in making laws and regulations for the Union, but to have the same superiority in the appointment of the President, the judges, and all other officers of government.

Hence these three States would, in reality, have the appointment of the President, judges, and all other officers. This President, and these judges, so appointed, we may be morally certain, would be citizens of one of those three States; and the President, as appointed by them, and a citizen of one of them, would espouse their interests and their views, when they came in competition with the views and interests of the other States. This President, so appointed by the three large States, and so unduly under their influence, was to have a negative upon every law that should be passed, which, if negatived by him, was not to take effect unless assented to by two-thirds of each branch of the legislature—a provision which deprived ten States of even the faintest shadow of liberty; for if they, by a miraculous unanimity, having all their members present, should outvote the other three, and pass a law contrary to their wishes, those three large States need only procure the President to negative it, and thereby prevent a possibility of its ever taking effect, because the representatives of those three

States would amount to much more than one third (almost one half) of the representative in each branch. And, sir, this government, so organized, with all this undue superiority in those three large States, was, as you see, to have a power of negativing the laws passed by every State legislature in the Union. Whether, therefore, laws passed by the legislature of Maryland, New York, Connecticut, Georgia, or of any other of the ten States, for the regulation of their internal police, should take effect, and be carried into execution, was to depend on the good pleasure of the representatives of Virginia, Pennsylvania, and Massachusetts.

This system of slavery, which bound hand and foot ten States in the Union, and placed them at the mercy of the other three, and under the most abject and servile subjection to them, was approved by a majority of the members of the convention, and reported by the committee.

On this occasion, the House will recollect that the convention was resolved into a Committee of the Whole. Of this committee Mr. Gorham was chairman. The Hon. Mr. Washington was then on the floor, in the same situation with the other members of the convention at large, to oppose any system he thought injurious, or to propose any alterations or amendments he thought beneficial. To these propositions; so reported by the committee, no opposition was given by that illustrious personage, or by the president of the State of Pennsylvania. They both appeared cordially to approve them, and to give them their hearty concurrence. Yet this system, I am confident, Mr. Speaker, there is not a member in this House would advocate, or who would hesitate one moment in saying it ought to be rejected. I mention this circumstance, in compliance with the duty I owe this honorable body, not with a view to lessen those exalted characters, but to show how far the greatest and best of men may be led to adopt very improper measures, through error in judgment, State influence, or by other causes; and to show that it is our duty not to suffer our eyes to be so far dazzled by the splendor of names as to run blindfolded into what may be our destruction.

Mr. Speaker, I revere those illustrious personages as much as any man here. No man has a higher sense of the important services they have rendered this country. No member of the convention went there more disposed to pay deference to their opinions. But I should little have deserved the trust this State reposed in me, if I could have sacrificed its dearest interests to my complaisance for their sentiments.

When, contrary to our hopes, it was found that a majority of the members of the convention had, in the committee, agreed to the system I have laid before you, we then thought it necessary to bring forward the propositions which such of us who had disapproved the plan before had prepared. The members who prepared these resolutions were principally of

the Connecticut, New York, New Jersey, Delaware, and Maryland delegations. The Hon. Mr. Patterson, of the Jerseys, laid them before the convention. Of these propositions I am in possession of a copy, which I shall beg leave to read to you.

These propositions were referred to a Committee of the Whole House. Unfortunately, the New Hampshire delegation had not yet arrived; and the sickness of a relation of the Hon. Mr. M'Henry obliged him still to be absent—a circumstance, sir, which I considered much to be regretted, as Maryland thereby was represented by only two delegates, and they unhappily differed very widely in their sentiments.

The result of the reference of these last propositions to a committee, was a speedy and hasty determination to reject them. I doubt not, sir, to those who consider them with attention, so sudden a rejection will appear surprising; but it may be proper to inform you, that, on our meeting in convention, it was soon found there were among us three parties of very different sentiments and views:—

One party, whose object and wish it was to abolish and annihilate all State governments, and to bring forward one general government over this extensive continent, of a monarchical nature, under certain restrictions and limitations. Those who openly avowed this sentiment were, it is true, but few; yet it is equally true, sir, that there was a considerable number who did not openly avow it, who were, by myself and many others of the convention, considered as being in reality favorers of that sentiment, and, acting upon those principles, covertly endeavoring to carry into effect what they well knew openly and avowedly could not be accomplished. The second party was not for the abolition of the State governments, nor for the introduction of a monarchical government under any form; but they wished to establish such a system as could give their own States undue power and influence, in the government, over the other States.

A third party was what I considered truly federal and republican. This party was nearly equal in number with the other two, and was composed of the delegations from Connecticut, New York, New Jersey, Delaware, and in part from Maryland; also of some individuals from other representations. This party, sir, were for proceeding upon terms of federal equality; they were for taking our present federal system as the basis of their proceedings, and, as far as experience had shown us that there were defects, to remedy those defects; as far as experience had shown that other powers were necessary to the federal government, to give those powers. They considered this the object for which they were sent by their States, and what their States expected from them. They urged that if, after doing this, experience should show that there still were defects in the system, (as no doubt there would be,) the same good sense that in-

duced this convention to be called, would cause the States, when they found it necessary, to call another; and if that convention should act with the same moderation, the members of it would proceed to correct such errors and defects as experience should have brought to light—that, by proceeding in this train, we should have a prospect at length of obtaining as perfect a system of federal government as the nature of things would admit.

On the other hand, if we, contrary to the purpose for which we were intrusted, considering ourselves as master-builders, too proud to amend our original government, should demolish it entirely, and erect a new system of our own, a short time might show the new system as defective as the old, perhaps more so. Should a convention be found necessary again, if the members thereof, acting upon the same principles, instead of amending and correcting its defects, should demolish that entirely, and bring forward a third system, that also might soon be found no better than either of the former; and thus we might always remain young in government, and always suffering the inconveniences of an incorrect, imperfect system.

But, sir, the favorers of monarchy, and those who wished the total abolition of State governments,—well knowing that a government founded on truly federal principles, the basis of which were the thirteen State governments preserved in full force and energy, would be destructive of their views; and knowing they were too weak in numbers openly to bring forward their system; conscious, also, that the people of America would reject it if proposed to them,—joined their interest with that party who wished a system giving particular States the power and influence over the others, procuring, in return, mutual sacrifices from them, in giving the government great and undefined powers as to its legislative and executive; well knowing that, by departing from a federal system, they paved the way for their favorite object—the destruction of the State governments, and the introduction of monarchy. And hence, Mr. Speaker, I apprehend, in a great measure, arose the objections of those honorable members, Mr. Mason and Mr. Gerry. In every thing that tended to give the large States power over the smaller, the first of those gentlemen could not forget he belonged to the Ancient Dominion; nor could the latter forget that he represented old Massachusetts; that part of the system which tended to give those States power over the others met with their perfect approbation. But when they viewed it charged with such powers as would destroy all State governments, their own as well as the rest,—when they saw a President so constituted as to differ from a monarch scarcely but in name, and having it in his power to become such in reality when he pleased,—they, being republicans and federalists, as far as an attachment to their own States would permit them, warmly and zealously opposed those parts of the system. From these

different sentiments, and from this combination of interest, I apprehend, sir, proceeded the fate of what was called the Jersey resolutions, and the report made by the committee of the whole House.

The Jersey propositions being thus rejected, the convention took up those reported by the committee, and proceeded to debate them by paragraphs. It was now that they who disapproved the report found it necessary to make a warm and decided opposition, which took place upon the discussion of the seventh resolution, which related to the inequality of representation in the first branch. Those who advocated this inequality, urged, that, when the articles of confederation were formed, it was only from necessity and expediency that the States were admitted each to have an equal vote; but that our situation was now altered, and, therefore, those States who considered it contrary to their interest would no longer abide by it. They said no State ought to wish to have influence in government, except in proportion to what it contributes to it; that if it contributes but little, it ought to have but a small vote; that taxation and representation ought always to go together; that, if one State had sixteen times as many inhabitants as another, or was sixteen times as wealthy, it ought to have sixteen times as many votes; that an inhabitant of Pennsylvania ought to have as much weight and consequence as an inhabitant of Jersey or Delaware; that it was contrary to the feelings of the human mind—what the large States would never submit to; that the large States would have great objects in view, in which they would never permit the smaller States to thwart them; that equality of suffrage was the rotten part of the Constitution, and that this was a happy time to get clear of it. In fine, it was the poison which contaminated our whole system, and the source of all the evils we experienced.

This, sir, is the substance of the arguments,—if arguments they may be called,—which were used in favor of inequality of suffrage. Those who advocated the equality of suffrage took the matter up on the original principles of government. They urged that all men, considered in a state of nature, before any government is formed, are equally free and independent, no one having any right or authority to exercise power over another, and this without any regard to difference in personal strength, understanding, or wealth—that, when such individuals enter into government, they have each a right to an equal voice in its first formation, and afterwards have each a right to an equal vote in every matter which relates to their government:—that if it could be done conveniently, they have a right to exercise it in person: where it cannot be done in person, but, for convenience, representatives are appointed to act for them, every person has a right to an equal vote in choosing that representative who is intrusted to do, for the whole, that which the

whole, if they could assemble, might do in person, and in the transacting of which each would have an equal voice:—that if we were to admit, because a man was more wise, more strong, or more wealthy, he should be entitled to more votes than another, it would be inconsistent with the freedom and liberty of that other, and would reduce him to slavery.

Suppose, for instance, ten individuals, in a state of nature, about to enter into government, nine of whom are equally wise, equally strong, and equally wealthy; the tenth is ten times as wise, ten times as strong, or ten times as rich: if, for this reason he is to have ten votes for each vote of either of the others, the nine might as well have no vote at all—since, though the whole nine might assent to a measure, yet the vote of the tenth would countervail, and set aside all their votes. If this tenth approved of what they wished to adopt, it would be well; but if he disapproved, he could prevent it; and in the same manner he could carry into execution any measure he wished, contrary to the opinions of all the others, he having ten votes, and the others altogether but nine. It is evident that, on these principles, the nine would have no will nor discretion of their own, but must be totally dependent on the will and discretion of the tenth: to him they would be as absolutely slaves as any negro is to his master. If he did not attempt to carry into execution any measures injurious to the other nine, it could only be said that they had a good master; they would not be the less slaves, because they would be totally dependent on the will of another, and not on their own will. They might not feel their chains, but they would, notwithstanding, wear them; and whenever their master pleased, he might draw them so tight as to gall them to the bone. Hence it was urged, the inequality of representation, or giving to one man more votes than another, on account of his wealth, &c., was altogether inconsistent with the principles of liberty; and in the same proportion as it should be adopted, in favor of one or more, in that proportion are the others enslaved. It was urged that, though every individual should have an equal voice in the government, yet even the superior wealth, strength, or understanding, would give great and undue advantages to those who possessed them—that wealth attracts respect and attention; superior strength would cause the weaker and more feeble to be cautious how they offended, and to put up with small injuries rather than engage in an unequal contest. In like manner, superior understanding would give its possessor many opportunities of profiting at the expense of the more ignorant.

Having thus established these principles with respect to the rights of individuals in a state of nature, and what is due to each on entering into government,—principles established by every writer on liberty,—they proceeded to show that States, when once formed, are considered, with respect to each other, as individ-

nals in a state of nature; that, like individuals, each State is considered equally free and equally independent, the one having no right to exercise authority over the other, though more strong, more wealthy, or abounding with more inhabitants—that, when a number of States unite themselves under a federal government, the same principles apply to them as when a number of individual men unite themselves under a State government—that every argument which shows one man ought not to have more votes than another, because he is wiser, stronger, or wealthier, proves that one State ought not to have more votes than another, because it is stronger, richer, or more populous; and that, by giving one State, or one or two States, more votes than the others, the others thereby are enslaved to such State or States, having the greater number of votes, in the same manner as in the case before put of individuals, when one has more votes than the others—that the reason why each individual man, in forming a State government, should have an equal vote, is, because each individual, before he enters into government, is equally free and independent; so each State, when States enter into a federal government, are entitled to an equal vote, because, before they entered into such federal government, each State was equally free and equally independent—that adequate representation of men, formed into a State government, consists in each man having an equal voice; either personally, or if by representatives, that he should have an equal voice in choosing the representatives—so adequate representation of States in a federal government, consists in each State having an equal voice, either in person or by its representative, in every thing which relates to the federal government—that this adequacy of representation is more important in a federal, than in a State government, because the members of a State government, the district of which is not very large, have generally such a common interest, that laws can scarcely be made by one part oppressive to the others, without their suffering in common; but the different States composing an extensive federal empire, widely distant one from the other, may have interests so totally distinct, that the one part might be greatly benefited by what would be destructive to the other.

They were not satisfied by resting it on principles; they also appealed to history. They showed that, in the Amphictyonic confederation of the Grecian cities, each city, however different in wealth, strength, and other circumstances, sent the same number of deputies, and had each an equal voice in every thing that related to the common concerns of Greece. It was shown that, in the seven provinces of the United Netherlands, and the confederated cantons of Switzerland, each canton, and each province, have an equal vote, although there are as great distinctions of wealth, strength, population, and extent of territory, among

those provinces, and those cantons, as among these States. It was said that the maxim, that taxation and representation ought to go together, was true so far that no person ought to be taxed who is not represented; but not in the extent insisted upon, to wit, that the quantum of taxation and representation ought to be the same; on the contrary, the quantum of representation depends upon the quantum of freedom, and therefore all, whether individual States or individual men, who are equally free, have a right to equal representation—that to those who insist that he who pays the greatest share of taxes ought to have the greatest number of votes, it is a sufficient answer to say, that this rule would be destructive of the liberty of the others, and would render them slaves to the more rich and wealthy—that, if one man pays more taxes than another, it is because he has more wealth to be protected by government, and he receives greater benefits from the government; so, if one State pays more to the federal government, it is because, as a State, she enjoys greater blessings from it; she has more wealth protected by it, or a greater number of inhabitants, whose rights are secured, and who share its advantages.

It was urged that, upon these principles, the Pennsylvanian, or inhabitant of a large State, was of as much consequence as the inhabitant of Jersey, Delaware, Maryland, or any other State—that his consequence was to be decided by his situation in his own State; that, if he was there as free, if he had as great share in the forming of his own government, and in the making and executing its laws, as the inhabitants of those other States, then was he equally important and of equal consequence. Suppose a confederation of States had never been adopted, but every State had remained absolutely in its independent situation,—no person could, with propriety, say that the citizen of the large State was not as important as the citizen of the smaller. The confederation of States cannot alter the case. It was said that, in all transactions between State and State, the freedom, independence, importance, and consequence, even the individuality, of each citizen of the different States, might with propriety be said to be swallowed up or concentrated in the independence, the freedom, and the individuality, of the State of which they are citizens; that the thirteen States are thirteen distinct, political, individual existences, as to each other; that the federal government is, or ought to be, a government over these thirteen political, individual existences, which form the members of that government; and as the largest State is only a single individual of this government, it ought to have only one vote; the smallest State, also being one individual member of this government, ought also to have one vote. To those who urged that the States having equal suffrage was contrary to the feelings of the human heart, it was answered, that it was admitted to be contrary to the feelings of pride and ambi-



tion; but those were feelings which ought not to be gratified at the expense of freedom.

It was urged that the position that great States would have great objects in view, in which they would suffer the less States to thwart them, was one of the strongest reasons why inequality of representation ought not to be admitted. If those great objects were not inconsistent with the interest of the less States, they would readily concur in them; but if they were inconsistent with the interest of a majority of the States composing the government, in that case two or three States ought not to have it in their power to aggrandize themselves at the expense of all the rest. To those who alleged that equality of suffrage, in our federal government, was the poisonous source from which all our misfortunes flowed, it was answered that the allegation was not founded in fact—that equality of suffrage had never been complained of, by the States, as a defect in our federal system—that, among the eminent writers, foreigners and others, who had treated of the defects of our confederation, and proposed alterations, none had proposed an alteration in this part of the system; and members of the convention, both in and out of Congress, who advocated the equality of suffrage, called upon their opponents, both in and out of Congress, and challenged them to produce one single instance where a bad measure had been adopted, or a good measure had failed of adoption, in consequence of the States having an equal vote. On the contrary, they urged that all our evils flowed from the want of power in the federal head, and that, let the right of suffrage in the States be altered in any manner whatever, if no greater powers were given to the government, the same inconveniences would continue.

It was denied that the equality of suffrage was originally agreed to on principles of necessity or expediency; on the contrary, that it was adopted on the principles of the rights of men, and the rights of States, which were then well known, and which then influenced our conduct, although now they seem to be forgotten. For this, the Journals of Congress were appealed to. It was from them shown, that, when the committee of Congress reported to that body the articles of confederation, the very first article which became the subject of discussion was that respecting equality of suffrage—that Virginia proposed divers modes of suffrage, all on the principle of inequality, which were almost unanimously rejected—that, on the question for adopting the article, it passed, Virginia being the only State which voted in the negative—that, after the articles of confederation were submitted to the States, by them to be ratified, almost every State proposed certain amendments, which they instructed their delegates to endeavor to obtain before ratification; and that, among all the amendments proposed, not one State, not even Virginia, proposed an amendment of that article securing the equality

of suffrage; the most convincing proof it was agreed to, and adopted, not from necessity, but upon a full conviction that, according to the principles of free government, the States had a right to that equality of suffrage.

But, sir, it was to no purpose that the futility of their objections was shown. When driven from the pretence that the equality of suffrage had been originally agreed to on principles of expediency and necessity, the representatives of the large States persisted in a declaration, that they would never agree to admit the smaller States to an equality of suffrage. In answer to this, they were informed, and informed in terms the most strong and energetic that could possibly be used, that we never would agree to a system giving them the undue influence and superiority they proposed—that we would risk every possible consequence—that from anarchy and confusion order might arise—that slavery was the worst that could ensue, and we considered the system proposed to be the most complete, most abject system of slavery that the wit of man ever devised, under the pretence of forming a government for free States—that we never would submit tamely and servilely to a present certain evil in dread of a future, which might be imaginary—that we were sensible the eyes of our country and the world were upon us—that we would not labor under the imputation of being unwilling to form a strong and energetic federal government; but we would publish the system which we approved, and also that which we opposed, and leave it to our country and the world at large to judge, between us, who best understood the rights of freemen and free States, and who best advocated them; and to the same tribunal we would submit, who ought to be answerable for all the consequences which might arise to the Union, from the convention breaking up without proposing any system to their constituents. During this debate, we were threatened that, if we did not agree to the system proposed, we never should have an opportunity of meeting in convention to deliberate on another; and this was frequently urged. In answer, we called upon them to show what was to prevent it, and from what quarter was our danger to proceed. Was it from a foreign enemy? Our distance from Europe, and the political situation of that country, left us but little to fear. Was there any ambitious State or States, who, in violation of every sacred obligation, was preparing to enslave the other States, and raise itself to consequence on the ruin of the others? Or was there any such ambitious individual? We did not apprehend it to be the case. But suppose it to be true; it rendered it the more necessary that we should sacredly guard against a system which might enable all those ambitious views to be carried into effect, even under the sanction of the Constitution and government. In fine, sir, all these threats were treated with contempt, and they were told that we apprehended but one reason

to prevent the States meeting again in convention; that, when they discovered the part this convention had acted, and how much its members were abusing the trust reposed in them, the States would never trust another convention.

At length, sir, after every argument had been exhausted by the advocates of equality of representation, the question was called, when a majority decided in favor of the inequality—Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia, voting for it; Connecticut, New York, New Jersey, and Delaware, against; Maryland divided. It may be thought surprising, sir, that Georgia, a State now small, and comparatively trifling, in the Union, should advocate this system of unequal representation, giving up her present equality in the federal government, and sinking herself almost to total insignificance in the scale; but, sir, it must be considered that Georgia has the most extensive territory in the Union, being larger than the whole island of Great Britain, and thirty times as large as Connecticut. This system being designed to preserve to the States their whole territory unbroken, and to prevent the erection of new States within the territory of any of them, Georgia looked forward when, her population being increased in some measure proportioned to her territory, she should rise in the scale, and give law to the other States; and hence we found the delegation of Georgia warmly advocating the proposition of giving the States unequal representation. Next day, the question came on with respect to the inequality of representation in the second branch; but little debate took place; the subject had been exhausted on the former question. On the votes being taken, Massachusetts, Pennsylvania, Virginia, North Carolina, and South Carolina, voted for the inequality. Connecticut, New York, New Jersey, Delaware, and Maryland,\* were in the negative. Georgia had only two representatives on the floor, one of whom (not, I believe, because he was against the measure, but from a conviction that he would go home, and thereby dissolve the convention, before we would give up the question) voted also in the negative, by which that State was divided. Thus, sir, on this great and important part of the system, the convention being equally divided,—five States for the measure, five against, and one divided,—there was a total stand; and we did not seem very likely to proceed any farther. At length, it was proposed that a

select committee should be balloted for, composed of a member from each State, which committee should endeavor to devise some mode of reconciliation or compromise. I had the honor to be on that committee. We met, and discussed the subject of difference. The one side insisted on the inequality of suffrage in both branches; the other side, equality in both. Each party was tenacious of their sentiments. When it was found that nothing could induce us to yield the inequality in both branches, they at length proposed, by way of compromise, if we would accede to their wishes as to the first branch, they would agree to an equal representation in the second. To this it was answered, that there was no merit in the proposal; it was only consenting, after they had struggled to put both their feet on our necks, to take one of them off, provided we would consent to let them keep the other on; when they knew, at the same time, that they could not put one foot on our necks, unless we would consent to it; and that, by being permitted to keep on that one foot, they should afterwards be able to place the other foot on whenever they pleased.

They were also called on to inform us what security they could give us, should we agree to this compromise, that they would abide by the plan of government formed upon it any longer than suited their interests, or they found it expedient. "The States have a right to an equality of representation. This is secured to us by our present articles of confederation; we are in possession of this right. It is now to be torn from us. What security can you give us that, when you get the power the proposed system will give you, when you have men and money, you will not force from the States that equality of suffrage, in the second branch, which you now deny to be their right, and only give up from absolute necessity? Will you tell us we ought to trust you because you now enter into a solemn compact with us? This you have done before, and now treat with the utmost contempt. Will you now make an appeal to the Supreme Being, and call on him to guaranty your observance of this compact? The same you have formerly done for your observance of the articles of confederation, which you are now violating in the most wanton manner.

"The same reason which you now urge, for destroying our present federal government, may be urged for abolishing the system you propose to adopt; and as the method prescribed by the articles of confederation is now totally disregarded by you, as little regard may be shown by you to the rules prescribed for the amendment of the new system, whenever, having obtained power by the government, you shall hereafter be pleased to discard it entirely, or so to alter it as to give yourselves all that superiority which you have now contended for, and to obtain which you have shown yourselves disposed to hazard the Union."—Such, sir, was the language used on that occasion; and they were told that, as we could not possibly have a

\* On this question, Mr. Martin was the only delegate for Maryland present, which circumstance secured the State a negative. Immediately after the question had been taken, and the president had declared the votes, Mr. Jenifer came into the convention; when Mr. King, from Massachusetts, valuing himself on Mr. Jenifer to divide the State of Maryland on this question, as he had on the former, requested of the president that the question might be put again. However, the motion was too extraordinary in its nature to meet with success.

stronger tie on them for the observance of the new system than we had for their observance of the articles of confederation, (which had proved totally insufficient,) it would be wrong and imprudent to confide in them. It was further observed, that the inequality of the representation would be daily increasing—that many of the States whose territory was confined, and whose population was at this time large in proportion to their territory, would probably, twenty, thirty, or forty years hence, have no more representatives than at the introduction of the government; whereas the States having extensive territory, where lands are to be procured cheap, would be daily increasing in the number of inhabitants, not only from propagation, but from the emigration of the inhabitants of the other States, and would have soon double, or perhaps treble, the number of representatives that they are to have at first, and thereby enormously increase their influence in the national councils. However, the majority of the select committee at length agreed to a series of propositions by way of compromise,—part of which related to the representation in the first branch, nearly as the system is now published, and part of them to the second branch, securing in that equal representation,—and reported them as a compromise upon the express terms that they were wholly to be adopted or wholly to be rejected. Upon this compromise, a great number of the members so far engaged themselves, that, if the system was progressed upon agreeably to the terms of compromise, they would lend their names, by signing it, and would not actively oppose it, if their States should appear inclined to adopt it. Some, however,—in which number was myself,—who joined in that report, and agreed to proceed upon those principles, and see what kind of a system would ultimately be formed upon it, yet reserved to themselves, in the most explicit manner, the right of finally giving a solemn dissent to the system, if it was thought by them inconsistent with the freedom and happiness of their country. This, sir, will account why the gentlemen of the convention so generally signed their names to the system;—not because they thought it a proper one; not because they thoroughly approved, or were unanimous for it; but because they thought it better than the system attempted to be forced upon them. This report of the select committee was, after long dissension, adopted by a majority of the convention, and the system was proceeded in accordingly. I believe near a fortnight—perhaps more—was spent in the discussion of this business, during which we were on the verge of dissolution, scarce held together by the strength of a hair, though the public papers were announcing our extreme unanimity.

Mr. Speaker, I think it my duty to observe that, during this struggle to prevent the large States from having all power in their hands, which had nearly terminated in a dissolution of the convention, it did not appear to me that

either of those illustrious characters, the Hon. Mr. Washington or the president of the State of Pennsylvania, was disposed to favor the claims of the smaller States against the undue superiority attempted by the large States. On the contrary, the honorable president of Pennsylvania was a member of the committee of compromise, and there advocated the right of the large States to an inequality in both branches, and only ultimately conceded it in the second branch on the principle of conciliation, when it was found no other terms would be accepted. This, sir, I think it my duty to mention for the consideration of those who endeavor to prop up a dangerous and defective system by great names. Soon after this period, the Hon. Mr. Yates and Mr. Lansing, of New York, left us. They had uniformly opposed the system; and, I believe, despairing of getting a proper one brought forward, or of rendering any real service, they returned no more. The propositions reported by the Committee of the Whole House having been fully discussed by the convention, and, with many alterations, having been agreed to by a majority, a committee of five was appointed to detail the system according to the principles contained in what had been agreed to by that majority. This was likely to require some time, and the convention adjourned for eight or ten days. Before the adjournment, I moved for liberty to be given to the different members to take correct copies of the propositions to which the convention had then agreed, in order that, during the recess of the convention, we might have an opportunity of considering them, and, if it should be thought that any alterations or amendments were necessary, that we might be prepared, against the convention met, to bring them forward for discussion. But, sir, the same spirit which caused our doors to be shut, our proceedings to be kept secret, our journals to be locked up, and every avenue, as far as possible, to be shut to public information, prevailed also in this case, and the proposal, so reasonable and necessary, was rejected by a majority of the convention; thereby precluding even the members themselves from the necessary means of information and deliberation on the important business in which they were engaged.

It has been observed, Mr. Speaker, by my honorable colleagues, that the debate respecting the mode of representation was productive of considerable warmth. This observation is true. But, sir, it is equally true, that, if we could have tamely and servilely consented to be bound in chains, and meanly condescended to assist in riveting them fast, we might have avoided all that warmth, and have proceeded with as much calmness and coolness as any Stoic could have wished. Having thus, sir, given the honorable members of this House a short history of some of the interesting parts of our proceedings, I shall beg leave to take up the system published by the convention, and shall request your in-

dulgence while I make some observations on different parts of it, and give you such further information as may be in my power. [Here Mr. Martin read the first section of the first article, and then proceeded.] With respect to this part of the system, Mr. Speaker, there was a diversity of sentiment. Those who were for two branches in the legislature—a House of Representatives and a Senate—urged the necessity of a second branch, to serve as a check upon the first, and used all those trite and common-place arguments which may be proper and just when applied to the formation of a State government over individuals variously distinguished in their habits and manners, fortune and rank; where a body chosen in a select manner, respectable for their wealth and dignity, may be necessary, frequently, to prevent the hasty and rash measures of a representation more popular. But, on the other side, it was urged that none of those arguments could with propriety be applied to the formation of a federal government over a number of independent States—that it is the State governments which are to watch over and protect the rights of the individual, whether rich or poor, or of moderate circumstances, and in which the democratic and aristocratic influence or principles are to be so blended, modified, and checked, as to prevent oppression and injury—that the federal government is to guard and protect the States and their rights, and to regulate their common concerns—that a federal government is formed by the States, as States, (that is, in their sovereign capacities,) in the same manner as treaties and alliances are formed—that a sovereignty, considered as such, cannot be said to have jarring interests or principles, the one aristocratic, and the other democratic; but that the principles of a sovereignty, considered as a sovereignty, are the same, whether that sovereignty is monarchical, aristocratical, democratical, or mixed—that the history of mankind doth not furnish an instance, from its earliest history to the present time, of a federal government constituted of two distinct branches—that the members of the federal government, if appointed by the States in their State capacities, (that is, by their legislatures, as they ought,) would be select in their choice; and, coming from different States, having different interests and views, this difference of interests and views would always be a sufficient check over the whole; and it was shown that even Adams, who, the reviewers have justly observed, appears to be as fond of checks and balances as Lord Chesterfield of the graces,—even he declares that a council consisting of one branch has always been found sufficient in a federal government.

It was urged, that the government we were forming was not in reality a federal, but a national, government, not founded on the principles of the preservation, but the abolition or consolidation, of all State governments—that we appeared totally to have forgotten the busi-

ness for which we were sent, and the situation of the country for which we were preparing our system—that we had not been sent to form a government over the inhabitants of America, considered as individuals—that, as individuals, they were all subject to their respective State governments, which governments would still remain though the federal government should be dissolved—that the system of government we were intrusted to prepare, was a government over these thirteen States; but that, in our proceedings, we adopted principles which would be right and proper only on the supposition that there were no State governments at all, but that all the inhabitants of this extensive continent were, in their individual capacity, without government, and in a state of nature—that, accordingly, the system proposes the legislature to consist of two branches, the one to be drawn from the people at large, immediately, in their individual capacity; the other to be chosen in a more select manner, as a check upon the first. It is, in its very introduction, declared to be a compact between the people of the United States as individuals; and it is to be ratified by the people at large, in their capacity as individuals; all which, it was said, would be quite right and proper, if there were no State governments, if all the people of this continent were in a state of nature, and we were forming one national government for them as individuals; and is nearly the same as was done in most of the States, when they formed their governments over the people who composed them.

Whereas it was urged, that the principles on which a federal government over States ought to be constructed and ratified are the reverse; and, instead of the legislature consisting of two branches, one branch was sufficient, whether examined by the dictates of reason or the experience of ages—that the representation, instead of being drawn from the people at large, as individuals, ought to be drawn from the States, as States, in their sovereign capacity—that, in a federal government, the parties to the compact are not the people, as individuals, but the States, as States; and that it is by the States, as States, in their sovereign capacity, that the system of government ought to be ratified, and not by the people, as individuals.

It was further said, that, in a federal government over States equally free, sovereign, and independent, every State ought to have an equal share in making the federal laws or regulations, in deciding upon them, and in carrying them into execution, neither of which was the case in this system, but the reverse, the States not having an equal voice in the legislature, nor in the appointment of the executive, the judges, and the other officers of government. It was insisted, that in the whole system there was but one federal feature—the appointment of the senators by the States in their sovereign capacity, that is, by their legislatures, and the equality of suffrage in that branch; but it was said that this feature was only federal in appearance

To prove this,—and that the Senate, as constituted, could not be a security for the protection and preservation of the State governments, and that the senators could not be considered the representatives of the States, as States,—it was observed that, upon just principles, the representative ought to speak the sentiments of his constituents, and ought to vote in the same manner that his constituents would do, (as far as he can judge,) provided his constituents were acting in person, and had the same knowledge and information with himself; and, therefore, that the representative ought to be dependent on his constituents, and answerable to them; that the connection between the representatives and the represented ought to be as near and as close as possible. According to these principles, Mr. Speaker, in this State it is provided, by its Constitution, that the representatives in Congress shall be chosen annually, shall be paid by the State, and shall be subject to recall even within the year—so cautiously has our Constitution guarded against an abuse of the trust reposed in our representatives in the federal government; whereas, by the third and sixth section of the first article of this new system, the senators are to be chosen for six years, instead of being chosen annually; instead of being paid by their States who send them, they, in conjunction with the other branch, are to pay themselves out of the treasury of the United States, and are not liable to be recalled during the period for which they are chosen. Thus, sir, for six years, the senators are rendered totally and absolutely independent of their States, of whom they ought to be the representatives, without any bond or tie between them. During that time, they may join in measures ruinous and destructive to their States, even such as should totally annihilate their State governments; and their States cannot recall them, nor exercise any control over them.

Another consideration, Mr. Speaker, it was thought, ought to have great weight to prove that the smaller States cannot depend on the Senate for the preservation of their rights, either against large and ambitious States, or against an ambitious, aspiring President. The Senate, sir, is so constituted that they are not only to compose one branch of the legislature, but, by the second section of the second article, they are to compose a privy council for the President. Hence it will be necessary that they should be, in a great measure, a permanent body, constantly residing at the seat of government. Seventy years are esteemed for the life of a man; it can hardly be supposed that a senator, especially from the States remote from the seat of empire, will accept of an appointment which must estrange him for six years from his State, without giving up, to a great degree, his prospects in his own State. If he has a family, he will take his family with him to the place where the government shall be fixed; that will become his home; and there is every reason to expect that his future views and prospects will

centre in the favors and emoluments of the general government, or of the government of that State where the seat of empire is established. In either case, he is lost to his own State. If he places his future prospects in the favors and emoluments of the general government, he will become a dependant and creature of the President. As the system enables a senator to be appointed to office, and without the nomination of the President no appointment can take place,—as such he will favor the wishes of the President, and concur in his measures, who, if he has no ambitious views of his own to gratify, may be too favorable to the ambitious views of the large States, who will have an undue share in his original appointment, on whom he will be more dependent afterwards than on the States which are smaller. If the senator places his future prospects in that State where the seat of empire is fixed, from that time he will be, in every question wherein its particular interest may be concerned, the representative of that State, not of his own.

But even this provision apparently for the security of the State governments, inadequate as it is, is entirely left at the mercy of the general government; for, by the fourth section of the first article, it is expressly provided, that the Congress shall have a power to make and alter all regulations concerning the time and manner of holding elections for senators—a provision expressly looking to, and I have no doubt designed for, the utter extinction and abolition of all State governments. Nor will this, I believe, be doubted by any person, when I inform you that some of the warm advocates and patrons of the system in convention strenuously opposed the choice of the senators by the State legislatures, insisting that the State governments ought not to be introduced in any manner so as to be component parts of, or instruments for carrying into execution, the general government. Nay, so far were the friends of the system from pretending that they meant it, or considered it as a federal system, that, on the question being proposed, “that a union of the States, merely federal, ought to be the sole objects of the exercise of the powers vested in the convention,” it was negatived by a majority of the members; and it was resolved, “that a national government ought to be formed.” Afterwards, the word “national” was struck out by them, because they thought the word might tend to alarm; and although, now, they who advocate the system pretend to call themselves federalists, in convention the distinction was quite the reverse; those who opposed the system were there considered and styled the federal party, those who advocated it the anti-federal.

Viewing it as a national, not a federal government,—as calculated and designed, not to protect and preserve, but to abolish and annihilate, the State governments,—it was opposed for the following reasons: It was said that this continent was much too extensive for one national government, which should have suffi-

cient power and energy to pervade, and hold in obedience and subjection, all its parts, consistently with the enjoyment and preservation of liberty—that the genius and habits of the people of America were opposed to such a government—that, during their connection with Great Britain, they had been accustomed to have all their concerns transacted within a narrow circle, their colonial district; they had been accustomed to have their seats of government near them, to which they might have access, without much inconvenience, when their business should require it—that, at this time, we find, if a county is rather large, the people complain of the inconvenience, and clamor for a division of their county, or for a removal of the place where their courts are held, so as to render it more central and convenient—that, in those States the territory of which is extensive, as soon as the population increases remote from the seat of government, the inhabitants are urgent for a removal of the seat of their government, or to be erected into a new State. As a proof of this, the inhabitants of the western parts of Virginia and North Carolina, of Vermont and the Province of Maine, were instances; even the inhabitants of the western parts of Pennsylvania, who, it is said, already seriously look forward to the time when they shall either be erected into a new State, or have their seat of government removed to the Susquehanna. If the inhabitants of the different States consider it as a grievance to attend a county court, or the seat of their own government, when a little inconvenient, can it be supposed they would ever submit to have a national government established, the seat of which would be more than a thousand miles removed from some of them? It was insisted that governments of a republican nature are those best calculated to preserve the freedom and happiness of the citizen—that governments of this kind are only calculated for a territory but small in its extent—that the only method by which an extensive continent, like America, could be connected and united together, consistently with the principles of freedom, must be by having a number of strong and energetic State governments, for securing and protecting the rights of individuals forming those governments, and for regulating all their concerns; and a strong, energetic, federal government over those States, for the protection and preservation, and for regulating the common concerns of the States.

It was further insisted that, even if it was possible to effect a total abolition of the State governments at this time, and to establish one general government over the people of America, it could not long subsist, but in a little time would again be broken into a variety of governments of a smaller extent, similar, in some manner, to the present situation of this continent. The principal difference, in all probability, would be, that the governments so established, being affected by some violent convul-

sion, might not be formed on principles so favorable to liberty as those of our present State governments—that this ought to be an important consideration to such of the States who had excellent governments, which was the case with Maryland, and most others, whatever it might be to persons who, disapproving of their particular State government, would be willing to hazard every thing to overturn and destroy it. These reasons, sir, influenced me to vote against two branches in the legislature, and against every part of the system which was repugnant to the principles of a federal government. Nor was there a single argument urged, or reason assigned, which, to my mind, was satisfactory to prove that a good government, on federal principles, was unattainable; the whole of their arguments only proving, what none of us controverted—that our federal government, as originally formed, was defective, and wanted amendment.

However, a majority of the convention, hastily and inconsiderately, without condescending to make a fair trial, in their great wisdom decided that a kind of government which a Montesquieu and a Price have declared the best calculated of any to preserve internal liberty, and to enjoy external strength and security, and the only one by which a large continent can be connected and united, consistently with the principles of liberty, was totally impracticable; and they acted accordingly.

With respect to that part of the second section of the first article which relates to the apportionment of representation and direct taxation, there were considerable objections made to it, besides the great objection of inequality. It was urged, that no principle could justify taking slaves into computation in apportioning the number of representatives a State should have in the government—that it involved the absurdity of increasing the power of a State in making laws for free men in proportion as that State violated the rights of freedom—that it might be proper to take slaves into consideration, when taxes were to be apportioned, because it had a tendency to discourage slavery; but to take them into account in giving representation tended to encourage the slave trade, and to make it the interest of the States to continue that infamous traffic—that slaves could not be taken into account as men, or citizens, because they were not admitted to the rights of citizens, in the States which adopted or continued slavery. If they were to be taken into account as property, it was asked what peculiar circumstance should render this property (of all others the most odious in its nature) entitled to the high privilege of conferring consequence and power in the government to its possessors, rather than any other property; and why slaves should, as property, be taken into account rather than horses, cattle, mules, or any other species; and it was observed, by an honorable member from Massachusetts, that he considered it as dishonorable and humiliating to enter into

compact with the slaves of the Southern States, as it would with the horses and mules of the Eastern. It was also objected that the numbers of representatives appointed by this section to be sent, by the particular States, to compose the first legislature, were not precisely agreeable to the rule of representation adopted by this system, and that the numbers in this section are artfully lessened for the large States, while the smaller States have their full proportion, in order to prevent the undue influence which the large States will have in the government from being too apparent; and I think, Mr. Speaker, that this objection is well founded.

I have taken some pains to obtain information of the number of freemen and slaves in the different States; and I have reason to believe that, if the estimate was now taken which is directed, and one delegate to be sent for every thirty thousand inhabitants, that Virginia would have at least twelve delegates, Massachusetts eleven, and Pennsylvania ten, instead of the number stated in this section; whereas the other States, I believe, would not have more than the number there allowed them; nor would Georgia, most probably, at present, send more than two. If I am right, Mr. Speaker, upon the enumeration being made, and the representation being apportioned according to the rule prescribed, the whole number of delegates would be seventy-one, thirty-six of which would be a quorum to do business: the delegates of Virginia, Massachusetts, and Pennsylvania, would amount to thirty-three of that quorum. Those three States will, therefore, have much more than equal power and influence in making the laws and regulations which are to affect this continent, and will have a moral certainty of preventing any laws or regulations which they disapprove, although they might be thought ever so necessary by a great majority of the States. It was further objected that, even if the States who had most inhabitants ought to have a greater number of delegates, yet the number of delegates ought not to be in exact proportion to the number of inhabitants, because the influence and power of those States whose delegates are numerous will be greater, when compared with the influence and power of the other States, than the proportion which the numbers of their delegates bear to each other; as, for instance, though Delaware has but one delegate, and Virginia but ten, yet Virginia has more than ten times as much power and influence in the government as Delaware. To prove this, it was observed that Virginia would have a much greater chance to carry any measure than any number of States whose delegates were altogether ten, (suppose the States of Delaware, Connecticut, Rhode Island, and New Hampshire,) since the ten delegates from Virginia, in every thing that related to the interest of that State, would act in union, and move one solid and compact body; whereas the delegates of these four States, though collectively equal in number to those from Vir-

ginia, coming from different States having different interests, will be less likely to harmonize and move in concert. As a further proof, it was said that Virginia, as the system is now reported, by uniting with her the delegates of four other States, can carry a question against the sense and interest of the eight States by sixty-four different combinations; the four States voting with Virginia being every time so far different as not to be composed of the same four; whereas the State of Delaware can only, by uniting four other States with her, carry a measure against the sense of eight States by two different combinations—a mathematical proof that the State of Virginia has thirty-two times greater chance of carrying a measure against the sense of eight States than Delaware, although Virginia has only ten times as many delegates. It was also shown that the idea was totally fallacious, which was attempted to be maintained, that, if a State had one thirteenth part of the numbers composing the delegation in this system, such State would have as much influence as under the articles of confederation. To prove the fallacy of this idea, it was shown that, under the articles of confederation, the State of Maryland had but one vote in thirteen; yet no measure could be carried against her interests without seven States, a majority of the whole, concurring in it; whereas, in this system, though Maryland has six votes,—which is more than the proportion of one in thirteen,—yet five States may, in a variety of combinations, carry a question against her interest, though seven other States concur with her, and six States, by a much greater number of combinations, may carry a measure against Maryland, united with six other States. I shall here, sir, just observe, that, as the committee of detail reported the system, the delegates from the different States were to be one for every forty thousand inhabitants: it was afterwards altered to one for every thirty thousand. This alteration was made after I left the convention, at the instance of whom I know not; but it is evident that the alteration is in favor of the States which have large and extensive territory, to increase their power and influence in the government, and to the injury of the smaller States; since it is the States of extensive territory who will most speedily increase the number of their inhabitants, as before has been observed, and will, therefore, most speedily procure an increase to the number of their delegates. By this alteration, Virginia, North Carolina, or Georgia, by obtaining one hundred and twenty thousand additional inhabitants, will be entitled to four additional delegates; whereas such State would only have been entitled to three, if forty thousand had remained the number by which to apportion the delegation.

As to that part of this section that relates to direct taxation, there was also an objection for the following reasons: It was said that a large sum of money was to be brought into the national treasury by the duties on commerce,



which would be almost wholly paid by the commercial States; it would be unequal and unjust that the sum which was necessary to be raised by direct taxation should be apportioned equally upon all the States, obliging the commercial States to pay as large a share of the revenue arising therefrom as the States from whom no revenue had been drawn by imposts; since the wealth and industry of the inhabitants of the commercial States will, in the first place, be severely taxed through their commerce, and afterwards be equally taxed with the industry and wealth of the inhabitants of the other States, who have paid no part of that revenue; so that, by this provision, the inhabitants of the commercial States are, in this system, obliged to bear an unreasonable and disproportionate share in the expenses of the Union, and the payment of that foreign and domestic debt which was incurred not more for the benefit of the commercial than of the other States.

In the sixth section of the first article, it is provided, that senators and representatives may be appointed to any civil office under the authority of the United States, except such as shall have been created, or the emoluments of which have been increased, during the time for which they were elected. Upon this subject, sir, there was a great diversity of sentiment among the members of the convention. As the propositions were reported by the Committee of the Whole House, a senator or representative could not be appointed to any office under a particular State, or under the United States, during the time for which they were chosen, nor to any office under the United States until one year after the expiration of that time. It was said—and in my opinion justly—that no good reason could be assigned why a senator or representative should be incapacitated to hold an office in his own government, since it can only bind him more closely to his State, and attach him the more to its interests, which, as its representative, he is bound to consult and sacredly guard, as far as is consistent with the welfare of the Union, and therefore, at most, would only add the additional motive of gratitude for discharging his duty; and, according to this idea, the clause which prevented senators or delegates from holding offices in their own States was rejected by a considerable majority. But, sir, we sacredly endeavored to preserve all that part of the resolution which prevented them from being eligible to offices under the United States, as we considered it essentially necessary to preserve the integrity, independence, and dignity of the legislature, and to secure its members from corruption.

I was in the number of those who were extremely solicitous to preserve this part of the report; but there was a powerful opposition made by such who wished the members of the legislature to be eligible to offices under the United States. Three different times did they attempt to procure an alteration, and as often failed—a majority firmly adhering to the reso-

lution as reported by the committee; however, an alteration was at length, by dint of perseverance, obtained, even within the last twelve days of the convention,—for it happened after I left Philadelphia. As to the exception that they cannot be appointed to offices created by themselves, or the emoluments of which are by themselves increased, it is certainly of little consequence, since they may easily evade it by creating new offices, to which may be appointed the persons who fill the offices before created, and thereby vacancies will be made, which may be filled by the members who for that purpose have created the new offices.

It is true, the acceptance of an office vacates their seat, nor can they be reelected during their continuance in office; but it was said, that the evil would first take place; that the price for the office would be paid before it was obtained; that vacating the seat of the person who was appointed to office made way for the admission of a new member, who would come there as desirous to obtain an office as he whom he succeeded, and as ready to pay the price necessary to obtain it: in fine, that it would be only driving away the flies that were filled, to make room for those that were hungry. And as the system is now reported, the President having the power to nominate to all offices, it must be evident that there is no possible security for the integrity and independence of the legislature, but that they are most unduly placed under the influence of the President, and exposed to bribery and corruption.

The seventh section of this article was also the subject of contest. It was thought, by many members of the convention, that it was very wrong to confine the origination of all revenue bills to the House of Representatives, since the members of the Senate will be chosen by the people as well as the members of the House of Delegates,—if not immediately, yet mediately,—being chosen by the members of the State legislatures which members are elected by the people; and that it makes no real difference whether we do a thing in person, or by a deputy or agent appointed by us for that purpose.

That no argument can be drawn from the House of Lords in the British constitution, since they are neither mediately nor immediately the representatives of the people, but are one of the three estates composing that kingdom, having hereditary rights and privileges, distinct from and independent of the people.

That it may, and probably will, be a future source of dispute and controversy between the two branches, what are, or are not, revenue bills, and the more so as they are not defined in the constitution; which controversies may be difficult to settle, and may become serious in their consequences, there being no power in the constitution to decide upon, or authorize, in cases of absolute necessity, to terminate them by a prorogation or dissolution of either of the branches—a remedy provided in the British



constitution, where the king has that power, which has been found necessary at times to be exercised, in cases of violent dissensions between the Lords and Commons on the subject of money bills.

That every regulation of commerce; every law relative to excises, stamps, the post-office, the imposing of taxes, and their collection; the creation of courts and offices; in fine, every law for the Union, if enforced by any pecuniary sanctions, as they would tend to bring money into the Continental treasury, might, and no doubt would, be considered a revenue act. That consequently the Senate—the members of which will, it may be presumed, be the most select in their choice, and consist of men the most enlightened and of the greatest abilities, who, from the duration of their appointment and the permanency of their body, will probably be best acquainted with the common concerns of the States, and with the means of providing for them—will be rendered almost useless as a part of the legislature; and that they will have but little to do in that capacity except patiently to wait the proceedings of the House of Representatives, and afterwards examine and approve, or propose amendments.

There were also objections to that part of this section which relates to the negative of the President. There were some who thought no good reason could be assigned for giving the President a negative of any kind. Upon the principle of a check to the proceedings of the legislature, it was said to be unnecessary; that the two branches having a control over each other's proceedings, and the Senate being chosen by the State legislatures, and being composed of members from the different States, there would always be a sufficient guard against measures being hastily or rashly adopted—that the President was not likely to have more wisdom or integrity than the senators, or any of them; or to better know or consult the interest of the States, than any member of the Senate, so as to be entitled to a negative on that principle; and as to the precedent from the British constitution, (for we were eternally troubled with arguments and precedents from the British government,) it was said it would not apply. The king of Great Britain there composed one of the three estates of the kingdom; he was possessed of rights and privileges as such, distinct from the Lords and Commons—rights and privileges which descended to his heirs, and were inheritable by them; that, for the preservation of these, it was necessary he should have a negative; but that this was not the case with the President of the United States, who was no more than an officer of the government; the sovereignty was not in him, but in the legislature. And it was further urged, even if he was allowed a negative, it ought not to be of so great extent as that given by the system, since his single voice is to countervail the whole of either branch, and any number less than two thirds of the other. However, a majority of

the convention was of a different opinion, and adopted it as it now makes a part of the system.

By the eighth section of this article, Congress is to have power to lay and collect taxes, duties, imposts, and excises. When we met in convention, after our adjournment, to receive the report of the committee of detail, the members of that committee were requested to inform us what powers were meant to be vested in Congress by the word duties in this section, since the word imposts extended to duties on goods imported, and by another part of the system no duties on exports were to be laid. In answer to this inquiry, we were informed that it was meant to give the general government the power of laying stamp duties on paper, parchment, and vellum. We then proposed to have the power inserted in express words, lest disputes might hereafter arise on the subject, and that the meaning might be understood by all who were to be affected by it; but to this it was objected, because it was said that the word stamp would probably sound odiously in the ears of many of the inhabitants, and be a cause of objection. By the power of imposing stamp duties, the Congress will have a right to declare, that no wills, deeds, or other instruments of writing, shall be good and valid without being stamped; that, without being reduced to writing, and being stamped, no bargain, sale, transfer of property, or contract of any kind or nature whatsoever, shall be binding; and also that no exemplifications of records, depositions, or probates of any kind, shall be received in evidence, unless they have the same solemnity. They may likewise oblige all proceedings of a judicial nature to be stamped, to give them effect. Those stamp duties may be imposed to any amount they please; and under the pretence of securing the collections of these duties, and to prevent the laws which imposed them from being evaded, the Congress may bring the decision of all questions relating to the conveyance, disposition, and rights of property, and every question relating to contracts between man and man, into the courts of the general government—their inferior courts in the first instance, and the superior court by appeal. By the power to lay and collect imposts, they may impose duties on any or every article of commerce imported into these States, to what amount they please. By the power to lay excises,—a power very odious in its nature, since it authorizes officers to go into your houses, your kitchens, your cellars, and to examine into your private concerns,—the Congress may impose duties on every article of use or consumption, on the food that we eat, on the liquors that we drink, on the clothes that we wear, the glass which enlightens our houses, or the hearths necessary for our warmth and comfort. By the power to lay and collect taxes, they may proceed to direct taxation on every individual, either by a capitation tax on their heads, or an assessment on their property. By this part of the section, therefore, the government has power

to lay what duties they please on goods imported; to lay what duties they please, afterwards, on whatever we use or consume; to impose stamp duties to what amount they please, and in whatever case they please;—afterwards, to impose on the people direct taxes, by capitation tax, or by assessment, to what amount they choose, and thus to sluice them at every vein as long as they have a drop of blood, without any control, limitation, or restraint; while all the officers for collecting these taxes, stamp duties, imposts, and excises, are to be appointed by the general government, under its directions, not accountable to the States; nor is there even a security that they shall be citizens of the respective States in which they are to exercise their offices. At the same time, the construction of every law imposing any and all these taxes and duties, and directing the collection of them, and every question arising thereon, and on the conduct of the officers appointed to execute these laws, and to collect these taxes and duties, so various in their kinds, is taken away from the courts of justice of the different States, and confined to the courts of the general government, there to be heard and determined by judges holding their offices under the appointment, not of the States, but of the general government.

Many of the members, and myself in the number, thought that States were much better judges of the circumstances of their citizens, and what sum of money could be collected from them by direct taxation, and of the manner in which it could be raised with the greatest ease and convenience to their citizens, than the general government could be; and that the general government ought not to have the power of laying direct taxes in any case but in that of the delinquency of a State. Agreeably to this sentiment, I brought in a proposition on which a vote of the convention was taken. The proposition was as follows: "And whenever the legislature of the United States shall find it necessary that revenue should be raised by direct taxation, having apportioned the same by the above rule, requisitions shall be made of the respective States to pay into the continental treasury their respective quotas within a time in the said requisition to be specified; and in case of any of the States failing to comply with such requisition, then, and then only, to have power to devise and pass acts directing the mode and authorizing the collection of the same."

Had this proposition been acceded to, the dangerous and oppressive power in the general government of imposing direct taxes on the inhabitants, which it now enjoys in all cases, would have been only vested in it, in case of the non-compliance of a State, as a punishment for its delinquency, and would have ceased the moment that the State complied with the requisition. But the proposition was rejected by a majority, consistent with their aim and desire of increasing the power of the general govern-

ment as far as possible, and destroying the powers and influence of the States. And though there is a provision that all duties, imposts, and excises, shall be uniform,—that is, to be laid to the same amount on the same articles in each State,—yet this will not prevent Congress from having it in their power to cause them to fall very unequally, and much heavier on some States than on others, because these duties may be laid on articles but little or not at all used in some States, and of absolute necessity for the use and consumption of others; in which case, the first would pay little or no part of the revenue arising therefrom, while the whole, or nearly the whole of it, would be paid by the last, to wit, the States which use and consume the articles on which the imposts and excises are laid.

By our original articles of confederation, the Congress have power to borrow money and emit bills of credit on the credit of the United States; agreeable to which was the report on this system, as made by the committee of detail. When we came to this part of the report, a motion was made to strike out the words "to emit bills of credit." Against the motion we urged, that it would be improper to deprive the Congress of that power; that it would be a novelty unprecedented to establish a government which should not have such authority; that it was impossible to look forward into futurity so far as to decide that events might not happen that should render the exercise of such a power absolutely necessary; and that we doubted whether, if a war should take place, it would be possible for this country to defend itself without having recourse to paper credit, in which case there would be a necessity of becoming a prey to our enemies, or violating the Constitution of our government; and that, considering the administration of the government would be principally in the hands of the wealthy there could be little reason to fear an abuse of the power by an unnecessary or injurious use of it. But, sir, a majority of the convention, being wise beyond every event, and being willing to risk any political evil rather than admit the idea of a paper emission in any possible case, refused to trust this authority to a government to which they were lavishing the most unlimited powers of taxation, and to the mercy of which they were willing blindly to trust the liberty and property of the citizens of every State in the Union; and they erased that clause from the system. Among other powers given to this government in the eighth section, it has that of appointing tribunals inferior to the Supreme Court. To this power there was an opposition. It was urged that there was no occasion for inferior courts of the general government to be appointed in the different States, and that such ought not to be admitted—that the different State judiciaries in the respective States would be competent to, and sufficient for, the cognizance in the first instance of all cases that should arise under the laws of the

general government, which, being by this system made the supreme law of the States, would be binding on the different State judiciaries—that, by giving an appeal to the Supreme Court of the United States, the general government would have a sufficient check over their decisions, and security for the enforcing of their laws—that to have inferior courts appointed under the authority of Congress, in the different States, would eventually absorb and swallow up the State judiciaries, by drawing all business from them to the courts of the general government, which the extensive and undefined powers, legislative and judicial, of which it is possessed, would easily enable it to do—that it would unduly and dangerously increase the weight and influence of Congress in the several States; be productive of a prodigious number of officers; and be attended with an enormous additional and unnecessary expense—that, the judiciaries of the respective States not having power to decide upon the laws of the general government, but the determination of those laws being confined to the judiciaries appointed under the authority of Congress in the first instance, as well as on appeal, there would be a necessity for judges or magistrates of the general government, and those to a considerable number, in each county of every State—that there would be a necessity for courts to be holden by them in each county, and that these courts would stand in need of all proper officers, such as sheriffs, clerks, and others, commissioned under the authority of the general government—in fine, that the administration of justice, as it will relate to the laws of the general government, would require in each State all the magistrates, courts, officers, and expense, which are now found necessary, in the respective States, for the administration of justice as it relates to the laws of the State governments. But here, again, we were overruled by a majority, who, assuming it as a principle that the general government and the State governments (as long as they should exist) would be at perpetual variance and enmity, and that their interests would constantly be opposed to each other, insisted, for that reason, that the State judges, being citizens of their respective States, and holding their commissions under them, ought not, though acting on oath, to be intrusted with the administration of the laws of the general government.

By the eighth section of the first article, the Congress have also a power given them to raise and support armies, without any limitation as to numbers, and without any restriction in time of peace. Thus, sir, this plan of government, instead of guarding against a standing army,—that engine of arbitrary power, which has so often and so successfully been used for the subversion of freedom,—has, in its formation, given it an express and constitutional sanction, and hath provided for its introduction. Nor could this be prevented. I took the sense of the convention on a proposition, by which the

Congress should not have power, in time of peace, to keep imbodyed more than a certain number of regular troops, that number to be ascertained by what should be considered a respectable peace establishment. This proposition was rejected by a majority, it being their determination that the power of Congress to keep up a standing army, even in peace, should only be restrained by their will and pleasure.

This section proceeds, further, to give a power to the Congress to provide for the calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions. As to giving such a power there was no objection; but it was thought by some that this power ought to be given with certain restrictions. It was thought that not more than a certain part of the militia of any one State ought to be obliged to march out of the same, or be employed out of the same, at any one time, without the consent of the Legislature of such State. This amendment I endeavored to obtain; but it met with the same fate which attended almost every attempt to limit the powers given to the general government, and constitutionally to guard against their abuse: it was not adopted. As it now stands, the Congress will have the power, if they please, to march the whole militia of Maryland to the remotest part of the Union, and keep them in service as long as they think proper, without being in any respect dependent upon the government of Maryland for this unlimited exercise of power over its citizens—all of whom, from the lowest to the greatest, may, during such service, be subjected to military law, and tied up and whipped at the halbert, like the meanest of slaves.

By the next paragraph, Congress is to have the power to provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States.

For this extraordinary provision, by which the militia—the only defence and protection which the State can have for the security of their rights against arbitrary encroachments of the general government—is taken entirely out of the power of their respective States, and placed under the power of Congress, it was speciously assigned, as a reason, that the general government would cause the militia to be better regulated and better disciplined than the State governments, and that it would be proper for the whole militia of the Union to have a uniformity in their arms and exercise. To this it was answered, that the reason, however specious, was not just—that it would be absurd that the militia of the western settlements, who were exposed to an Indian enemy, should either be confined to the same arms or exercise as the militia of the Eastern or Middle States—that the same penalties which would be sufficient to enforce an obedience to militia laws in some States, would be totally disregarded in others—that, leaving the power to the several States, they would respectively best know the situa-

tion and circumstance of their citizens, and the regulations that would be necessary and sufficient to effect a well-regulated militia in each—that we were satisfied the militia had heretofore been as well disciplined as if they had been under the regulations of Congress—and that the States would now have an additional motive to keep their militia in proper order, and fit for service, as it would be the only chance to preserve their existence against a general government, armed with powers sufficient to destroy them.

These observations, sir, procured from some of the members an open avowal of those reasons by which we believed, before, that they were actuated. They said that, as the States would be opposed to the general government, and at enmity with it,—which, as I have already observed, they assumed as a principle,—if the militia was under the control and the authority of the respective States, it would enable them to thwart and oppose the general government. They said the States ought to be at the mercy of the general government, and, therefore, that the militia ought to be put under its power, and not suffered to remain under the power of the respective States. In answer to these declarations, it was urged that if, after having retained to the general government the great powers already granted,—and among those, that of raising and keeping up regular troops without limitation,—the power over the militia should be taken away from the States, and also given to the general government, it ought to be considered as the last coup de grace to the State governments; that it must be the most convincing proof, the advocates of this system design the destruction of the State governments, and that no professions to the contrary ought to be trusted; and that every State in the Union ought to reject such a system with indignation, since, if the general government should attempt to oppress and enslave them, they could not have any possible means of self-defence; because the proposed system, taking away from the States the right of organizing, arming, and disciplining of the militia, the first attempt made by a State to put the militia in a situation to counteract the arbitrary measures of the general government would be construed into an act of rebellion or treason, and Congress would instantly march their troops into the State. It was further observed that, when a government wishes to deprive their citizens of freedom, and reduce them to slavery, it generally makes use of a standing army for that purpose, and leaves the militia in a situation as contemptible as possible, lest they might oppose its arbitrary designs—that in this system we give the general government every provision it could wish for, and even invite it to subvert the liberties of the States and their citizens, since we give it the right to increase and keep up a standing army as numerous as it would wish, and, by placing the militia under its power, enable it to leave the militia totally unorganized, undisciplined,

and even to disarm them; while the citizens so far from complaining of this neglect, might even esteem it a favor in the general government, as thereby they would be freed from the burden of militia duties, and left to their own private occupations and pleasures. However, all arguments, and every reason which could be urged on this subject, as well as on many others, were obliged to yield to one that was unanswerable, a majority upon the division.

By the ninth section of this article, the importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited prior to the year one thousand eight hundred and eight; but a duty may be imposed on such importation not exceeding ten dollars each person.

The design of this clause is to prevent the general government from prohibiting the importation of slaves; but the same reasons which caused them to strike out the word “national,” and not admit the word “stamps,” influenced them here to guard against the word “slaves.” They anxiously sought to avoid the admission of expressions which might be odious in the ears of Americans, although they were willing to admit into their system those things which the expressions signified; and hence it is that the clause is so worded as really to authorize the general government to impose a duty of ten dollars on every foreigner who comes into a State to become a citizen, whether he comes absolutely free, or qualifiedly so as a servant; although this is contrary to the design of the framers, and the duty was only meant to extend to the importation of slaves.

This clause was the subject of a great diversity of sentiment in the convention. As the system was reported by the committee of detail, the provision was general, that such importation should not be prohibited, without confining it to any particular period. This was rejected by eight States—Georgia, South Carolina, and, I think, North Carolina, voting for it.

We were then told by the delegates of the two first of those States, that their States would never agree to a system which put it in the power of the general government to prevent the importation of slaves, and that they, as delegates from those States, must withhold their assent from such a system.

A committee of one member from each State was chosen by ballot, to take this part of the system under their consideration, and to endeavor to agree upon some report which should reconcile those States. To this committee also was referred the following proposition, which had been reported by the committee of detail, viz: “No navigation act shall be passed without the assent of two-thirds of the members present in each House”—a proposition which the staple and commercial States were solicitous to retain, lest their commerce should be placed too much under the power of the Eastern States, but which these last States were as anxious to

reject. This committee—of which also I had the honor to be a member—met, and took under their consideration the subjects committed to them. I found the Eastern States, notwithstanding their aversion to slavery, were very willing to indulge the Southern States, at least with a temporary liberty to prosecute the slave trade, provided the Southern States would, in their turn, gratify them, by laying no restriction on navigation acts; and after a very little time, the committee, by a great majority agreed on a report, by which the general government was to be prohibited from preventing the importation of slaves for a limited time, and the restrictive clause relative to navigation acts was to be omitted.

This report was adopted by a majority of the convention, but not without considerable opposition. It was said that we had just assumed a place among independent nations, in consequence of our opposition to the attempts of Great Britain to enslave us; that this opposition was grounded upon the preservation of those rights to which God and nature had entitled us, not in particular, but in common with the rest of all mankind—that we had appealed to the Supreme Being for his assistance, as the God of freedom, who could not but approve our efforts to preserve the rights which he had thus imparted to his creatures—that now, when we scarcely had risen from our knees, from supplicating his aid and protection, in forming our government over a free people,—a government formed pretendedly on the principles of liberty, and for its preservation,—in that government to have a provision not only putting it out of its power to restrain and prevent the slave trade, but even encouraging that most infamous traffic, by giving the States power and influence in the Union in proportion as they cruelly and wantonly sport with the rights of their fellow-creatures, ought to be considered as a solemn mockery of, and insult to, that God whose protection we had then implored; and could not fail to hold us up in detestation, and render us contemptible to every true friend of liberty in the world. It was said, it ought to be considered, that national crimes can only be, and frequently are, punished in this world by national punishments; and that the continuance of the slave trade, and thus giving it a national sanction and encouragement, ought to be considered as justly exposing us to the displeasure and vengeance of Him who is equally Lord of all, and who views with equal eye the poor African slave and his American master.

It was urged that, by this system, we were giving the general government full and absolute power to regulate commerce, under which general power it would have a right to restrain, or totally prohibit, the slave trade; it must, therefore, appear to the world absurd and disgraceful, to the last degree, that we should except from the exercise of that power the only branch of commerce which is unjustifiable in its nature, and contrary to the rights of mankind—

that, on the contrary, we ought rather to prohibit expressly, in our Constitution, the further importation of slaves; and to authorize the general government, from time to time, to make such regulations as should be thought most advantageous for the gradual abolition of slavery, and the emancipation of the slaves which are already in the States—that slavery is inconsistent with the genius of republicanism, and has a tendency to destroy those principles on which it is supported, as it lessens the sense of the equal rights of mankind, and habituates us to tyranny and oppression. It was further urged that, by this system of government, every State is to be protected both from foreign invasion and from domestic insurrections; that, from this consideration, it was of the utmost importance it should have a power to restrain the importation of slaves, since, in proportion as the number of slaves was increased in any State, in the same proportion the State is weakened and exposed to foreign invasion or domestic insurrection, and by so much less will it be able to protect itself against either; and, therefore, will, by so much the more, want aid from, and be a burden to, the Union. It was further said, that as, in this system, we were giving the general government a power, under the idea of national character or national interest, to regulate even our weights and measures, and have prohibited all possibility of emitting paper money, and passing insolvent laws, &c., it must appear still more extraordinary, that we should prohibit the government from interfering with the slave trade, than which nothing could so materially affect both our national honor and interest. These reasons influenced me, both on the committee and in convention, most decidedly to oppose and vote against the clause, as it now makes a part of the system.

You will perceive, sir, not only that the general government is prohibited from interfering in the slave trade before the year eighteen hundred and eight, but that there is no provision in the Constitution that it shall afterwards be prohibited, nor any security that such prohibition will ever take place; and I think there is great reason to believe that, if the importation of slaves is permitted until the year eighteen hundred and eight, it will not be prohibited afterwards. At this time we do not generally hold this commerce in so great abhorrence as we have done. When our liberties were at stake, we warmly felt for the common rights of men. The danger being thought to be past which threatened ourselves, we are daily growing more insensible to those rights. In those States which have restrained or prohibited the importation of slaves, it is only done by legislative acts, which may be repealed. When those States find that they must, in their national character and connection, suffer in the disgrace, and share in the inconveniences, attendant upon that detestable and iniquitous traffic, they may be desirous, also, to share in the benefits arising from it; and the odium at-

tending it will be greatly effaced by the sanction which is given to it in the general government.

By the next paragraph, the general government is to have a power of suspending the habeas corpus act, in cases of rebellion or invasion.

As the State governments have a power of suspending the habeas corpus act in those cases, it was said there could be no reason for giving such a power to the general government, since, whenever the State which is invaded, or in which an insurrection takes place, finds its safety requires it, it will make use of that power; and it was urged that, if we gave this power to the general government, it would be an engine of oppression in its hands, since, whenever a State should oppose its views, however arbitrary and unconstitutional, and refuse submission to them, the general government may declare it an act of rebellion, and suspending the habeas corpus act, may seize upon the persons of those advocates of freedom who have had virtue and resolution enough to excite the opposition, and may imprison them during its pleasure in the remotest part of the Union, so that a citizen of Georgia might be Bastiled in the farthest part of New Hampshire, or a citizen of New Hampshire in the farthest extreme to the South,—cut off from their family, their friends, and their every connection. These considerations induced me, sir, to give my negative also to this clause.

In this same section, there is a provision that no preference shall be given to the ports of one State over another, and that vessels bound to or from one State shall not be obliged to enter, clear, or pay duties, in another. This provision, as well as that which relates to the uniformity of impost duties and excises, was introduced, sir, by the delegation of this State. Without such a provision, it would have been in the power of the general government to compel all ships sailing into or out of the Chesapeake, to clear and enter at Norfolk, or some port in Virginia—a regulation which would be extremely injurious to our commerce, but which would, if considered merely as to the interest of the Union, perhaps not be thought unreasonable, since it would render the collection of the revenue arising from commerce, more certain and less expensive.

But, sir, as the system is now reported, the general government have a power to establish what ports they please in each State, and to ascertain at what ports in every State ships shall clear and enter in such State—a power which may be so used as to destroy the effect of that provision, since by it may be established a port in such a place as shall be so inconvenient to the States as to render it more eligible for their shipping to clear and enter in another than in their own States. Suppose, for instance, the general government should determine that all ships which cleared or entered in Maryland, should clear and enter at Georgetown, on the

Potomac; it would oblige all the ships which sailed from, or were bound to, any other port of Maryland, to clear or enter in some port in Virginia. To prevent such a use of the power which the general government now has of limiting the number of ports in a State, and fixing the place or places where they shall be, we endeavored to obtain a provision, that the general government should only, in the first instance, have authority to ascertain the number of ports proper to be established in each State, and transmit information thereof to the several States, the legislatures of which, respectively, should have the power to fix the places where those ports should be, according to their idea of what would be most advantageous to the commerce of their State, and most for the ease and convenience of their citizens; and that the general government should not interfere in the establishment of the places, unless the legislature of the State should neglect or refuse so to do; but we could not obtain this alteration.

By the tenth section, every State is prohibited from emitting bills of credit. As it was reported by the committee of detail, the States were only prohibited from emitting them without the consent of Congress; but the convention was so smitten with the paper-money dread that they insisted the prohibition should be absolute. It was my opinion, sir, that the States ought not to be totally deprived of the right to emit bills of credit, and that, as we had not given an authority to the general government for that purpose, it was the more necessary to retain it in the States. I considered that this State, and some others, have formerly received great benefit from paper emissions, and that, if public and private credit should once more be restored, such emissions may hereafter be equally advantageous; and further, that it is impossible to foresee that events may not take place which shall render paper money of absolute necessity; and it was my opinion, if this power was not to be exercised by a State without the permission of the general government, it ought to be satisfactory even to those who were the most haunted by the apprehensions of paper money. I, therefore, thought it my duty to vote against this part of the system.

The same section also puts it out of the power of the States to make any thing but gold and silver coin a tender in payment of debts, or to pass any law impairing the obligation of contracts.

I considered, sir, that there might be times of such great public calamities and distress, and of such extreme scarcity of specie, as should render it the duty of a government, for the preservation of even the most valuable part of its citizens, in some measure to interfere in their favor, by passing laws totally or partially stopping courts of justice; or authorizing the debtor to pay by instalments, or by delivering up his property to his creditors at a reasonable and honest valuation. The times have been such as to render regulations of this kind necessary

in most or all of the States to prevent the wealthy creditor and the moneyed man from totally destroying the poor, though industrious debtor. Such times may again arrive. I therefore voted against depriving the States of this power—a power which I am decided they ought to possess, but which, I admit, ought only to be exercised on very important and urgent occasions. I apprehend, sir, the principal cause of complaint among the people at large is, the public and private debt with which they are oppressed, and which, in the present scarcity of cash, threatens them with destruction, unless they can obtain so much indulgence, in point of time, that, by industry and frugality, they may extricate themselves.

This government proposal, I apprehend, so far from removing, will greatly increase those complaints, since, grasping in its all-powerful hand the citizens of the respective States, it will, by the imposition of the variety of taxes, imposts, stamps, excises, and other duties, squeeze from them the little money they may acquire, the hard earnings of their industry, as you would squeeze the juice from an orange, till not a drop more can be extracted; and then let loose upon them their private creditors, to whose mercy it consigns them, by whom their property is to be seized upon and sold, in this scarcity of specie, at a sheriff's sale, where nothing but ready cash can be received, for a tenth part of its value, and themselves and their families to be consigned to indigence and distress, without their governments having a power to give them a moment's indulgence, however necessary it might be, and however desirous to grant them aid.

By this same section, every State is also prohibited from laying any imposts, or duties, on imports or exports, without the permission of the general government. It was urged that, as almost all sources of taxation were given to Congress, it would be but reasonable to leave the States the power of bringing revenue into their treasuries by laying a duty on exports, if they should think proper, which might be so light as not to injure or discourage industry, and yet might be productive or considerable revenue; also, that there might be cases in which it would be proper, for the purpose of encouraging manufactures, to lay duties to prohibit the exportation of raw materials, and, even in addition to the duties laid by Congress on imports, for the sake of revenue, to lay a duty to discourage the importation of particular articles into a State, or to enable the manufacturer here to supply us on as good terms as they could be obtained from a foreign market. However, the most we could obtain was, that this power might be exercised by the States with, and only with, the consent of Congress, and subject to its control; and so anxious were they to seize on every shilling of our money for the general government, that they insisted even the little revenue that might thus arise, should not be appropriated to the use of the respective

States where it was collected, but should be paid into the treasury of the United States; and accordingly it is so determined.

The second article relates to the Executive—his mode of election, his powers, and the length of time he should continue in office.

On these subjects there was a great diversity of sentiment. Many of the members were desirous that the President should be elected for seven years, and not to be eligible a second time. Others proposed that he should not be absolutely ineligible, but that he should not be capable of being chosen a second time, until the expiration of a certain number of years. The supporters of the above proposition went upon the idea that the best security for liberty was a limited duration, and a rotation of office, in the chief Executive department.

There was a party who attempted to have the President appointed during good behavior, without any limitation as to time; and, not being able to succeed in that attempt, they then endeavored to have him re-eligible without any restraint. It was objected that the choice of a President to continue in office during good behavior, would at once be rendering our system an elective monarchy; and that, if the President was to be re-eligible without any interval of disqualification, it would amount nearly to the same thing, since, from the powers that the President is to enjoy, and the interests and influence with which they will be attended, he will be almost absolutely certain of being re-elected from time to time, as long as he lives. As the propositions were reported by the committee of the whole House, the President was to be chosen for seven years, and not be eligible at any time after. In the same manner, the proposition was agreed to in convention; and so it was reported by the committee of detail, although a variety of attempts were made to alter that part of the system by those who were of a contrary opinion, in which they repeatedly failed; but, sir, by never losing sight of their object, and choosing a proper time for their purpose, they succeeded, at length, in obtaining the alteration, which was not made until within the last twelve days before the convention adjourned.

As these propositions were agreed to by the Committee of the whole House, the President was to be appointed by the national legislature; and, as it was reported by the committee of detail, the choice was to be made by ballot, in such a manner that the States should have an equal voice in the appointment of this officer, as they, of right, ought to have; but those who wished, as far as possible, to establish a national instead of a federal government, made repeated attempts to have the President chosen by the people at large. On this the sense of the convention was taken, I think, not less than three times while I was there, and as often rejected; but within the last fortnight of their session, they obtained the alteration in the manner it now stands, by which the large States have a



very undue influence in the appointment of the President. There is no case where the States will have an equal voice in the appointment of the President, except where two persons shall have an equal number of votes, and those a majority of the whole number of electors,—a case very unlikely to happen,—or where no person has the majority of the votes. In these instances, the House of Representatives are to choose by ballot, each State having an equal voice; but they are confined, in the last instance, to the five who have the greatest number of votes, which gives the largest States a very unequal chance of having the President chosen under their nomination.

As to the Vice President,—that great officer of government, who is, in case of the death, resignation, removal, or inability, of the President, to supply his place, and be vested with his powers, and who is officially to be President of the Senate,—there is no provision by which a majority of the voices of the electors are necessary to his appointment; but after it is decided who is chosen President, that person who has the next number of votes of the electors is declared to be legally elected to the Vice Presidency; so that, by this system, it is very possible, and not improbable, that he might be appointed by the electors of a single large State; and a very undue influence in the Senate is given to that State of which the Vice President is a citizen, since, in every question where the Senate is divided that State will have two votes—the President having, on those occasions, a casting voice. Every part of the system which relates to the Vice President, as well as the present mode of electing the President, was introduced and agreed upon after I left Philadelphia.

Objections were made to that part of this article by which the President is appointed commander-in-chief of the army and navy of the United States, and of the militia of the several States; and it was wished to be so far restrained, that he should not command in person; but this could not be obtained. The power given to the President of granting reprieves and pardons was also thought extremely dangerous, and as such opposed. The President thereby has the power of pardoning those who are guilty of treason, as well as of other offences. It was said that no treason was so likely to take place as that in which the President himself might be engaged—the attempt to assume to himself powers not given by the Constitution, and establish himself in regal authority; in which attempt a provision is made for him to secure from punishment the creatures of his ambition, the associates and abettors of his treasonable practices, by granting them pardons, should they be defeated in their attempts to subvert the Constitution.

To that part of this article, also, which gives the President a right to nominate, and with the consent of the Senate, to appoint all the officers, civil and military, of the United States, there

was considerable opposition. It was said that the person who nominates will always in reality appoint, and that this was giving the President a power and influence which, together with the other powers bestowed upon him, would place him above all restraint or control. In fine, it was urged that the President, as here constituted, was a king in every thing but the name; that though he was to be chosen for a limited time, yet, at the expiration of that time, if he is not re-elected, it will depend entirely upon his own moderation whether he will resign that authority with which he has once been invested—that, from his having the appointment of all the variety of officers in every part of the civil department for the Union, who will be very numerous in themselves and their connections, relations, friends, and dependants, he will have a formidable host devoted to his interest, and ready to support his ambitious views—that the army and navy, which may be increased without restraint as to numbers; the officers of which, from the highest to the lowest, are all to be appointed by him, and dependent on his will and pleasure, and commanded by him in person, will, of course, be subservient to his wishes, and ready to execute his commands; in addition to which, the militia are also entirely subjected to his orders: that these circumstances, combined together, will enable him, when he pleases, to become a king in name as well as in substance, and establish himself in office not only for his own life, but even, if he chooses, to have that authority perpetuated to his family.

It was further observed, that the only appearance of responsibility in the President, which the system holds up to our view, is the provision for impeachment; but that, when we reflect that he cannot be impeached but by the House of Delegates, and that the members of this House are rendered dependent upon, and unduly under the influence of, the President, by being appointable to offices of which he has the sole nomination, so that, without his favor and approbation, they cannot obtain them, there is little reason to believe that a majority will ever concur in impeaching the President, let his conduct be ever so reprehensible; especially, too, as the final event of that impeachment will depend upon a different body, and the members of the House of Delegates will be certain, should the decision be ultimately in favor of the President, to become thereby the objects of his displeasure, and to bar to themselves every avenue to the emoluments of government.

Should he, contrary to probability, be impeached, he is afterwards to be tried and adjudged by the Senate, and without the concurrence of two-thirds of the members who shall be present, he cannot be convicted. This Senate being constituted a privy council to the President, it is probable many of its leading and influential members may have advised or concurred in the very measures for which he may be impeached. The members of the Senate also, are, by the system, placed as unduly under



the influence of, and dependent upon, the President, as the members of the other branch, since they also are appointable to offices, and cannot obtain them but through the favor of the President.

There will be great, important, and valuable offices under this government, should it take place, more than sufficient to enable him to hold out the expectation of one of them to each of the Senators. Under these circumstances, will any person conceive it to be difficult for the President always to secure to himself more than one-third of that body? Or can it reasonably be believed that a criminal will be convicted, who is constitutionally empowered to bribe his judges, at the head of whom he is to preside, on those occasions, the chief justice—which officer, in his original appointment, must be nominated by the President, and will, therefore, probably, be appointed, not so much for his eminence in legal knowledge and for his integrity, as from favoritism and influence; since the President, knowing that, in case of impeachment, the chief justice is to preside at his trial, will naturally wish to fill that office with a person of whose voice and influence he shall consider himself secure. These are reasons to induce a belief that there will be but little probability of the President ever being either impeached or convicted. But it was also urged that, vested with the powers which the system gives him, and with the influence attendant upon those powers, to him it would be of little consequence whether he was impeached or convicted, since he will be able to set both at defiance. These considerations occasioned a part of the convention to give a negative to this part of the system establishing the Executive as it is now offered for our acceptance.

By the third article, the judicial power of the United States is vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. These courts, and these only, will have a right to decide upon the laws of the United States, and all questions arising upon their construction, and in a judicial manner to carry those laws into execution; to which the courts, both superior and inferior, of the respective States, and their judges and other magistrates, are rendered incompetent. To the courts of the general government are also confined all cases, in law or equity, arising under the proposed Constitution and treaties made under the authority of the United States—all cases affecting ambassadors, other public ministers, and consuls—all cases of admiralty and maritime jurisdiction—all controversies to which the United States are a party—all controversies between two or more States; between citizens of the same State, claiming lands under grants of different States: and between a State, or the citizens thereof, and foreign States, citizens, or subjects. Whether therefore, any laws or regulations of the Congress, any acts of its President or other officers, are contrary to, or not warranted by, the Con-

stitution, rests only with the judges, who are appointed by Congress, to determine; by whose determinations every State must be bound. Should any question arise between a foreign consul and any of the citizens of the United States, however remote from the seat of empire, it is to be heard before the judiciary of the general government, and, in the first instance to be heard in the Supreme Court, however inconvenient to the parties, and however trifling the subject of dispute.

Should the mariners of an American or foreign vessel, while in any American port, have occasion to sue for their wages, or in any other instance a controversy belonging to the admiralty jurisdiction should take place between them and their masters or owners, it is in the courts of the general government the suit must be instituted; and either party may carry it by appeal to its supreme court; the injury to commerce and the oppression to individuals which may thence arise, need not be enlarged upon. Should a citizen of Virginia, Pennsylvania, or any other of the United States be indebted to, or have debts due from, a citizen of this State, or any other claim be subsisting on one side or the other, in consequence of commercial or other transactions, it is only in the courts of Congress that either can apply for redress. The case is the same should any claim subsist between citizens of this State and foreigners, merchants, mariners, and others, whether of a commercial or of any other nature, they must be prosecuted in the same courts; and though in the first instance they may be brought in the inferior, yet an appeal may be made to the supreme judiciary, even from the remotest State in the Union.

The inquiry concerning, and trial of every offence against, and breach of the laws of Congress, are also confined to its courts; the same courts also have the sole right to inquire concerning and try every offence, from the lowest to the highest, committed by the citizens of any other State, or of a foreign nation, against the laws of this State within its territory—and in all these cases the decision may be ultimately brought before the supreme tribunal, since the appellate jurisdiction extends to criminal as well as to civil cases.

And in all those cases where the general government has jurisdiction in civil questions, the proposed constitution not only makes no provision for the trial by jury in the first instance, but by its appellate jurisdiction absolutely takes away that inestimable privilege, since it expressly declares the supreme court shall have appellant jurisdiction both as to law and fact. Should therefore a jury be adopted in the inferior court, it would only be a needless expense, since on an appeal the determination of that jury, even on questions of fact, however honest and upright, is to be of no possible effect—the supreme court is to take up all questions of fact—to examine the evidence relative thereto—to decide upon them in the same

manner as if they had never been tried by a jury—nor is trial by jury secured in criminal cases. It is true, that in the first instance, in the inferior court, the trial is to be by jury; in this, and in this only, is the difference between criminal and civil cases. But, sir, the appellate jurisdiction extends, as I have observed, to cases criminal as well as to civil, and on the appeal the court is to decide not only on the law but on the fact. If, therefore, even in criminal cases, the general government is not satisfied with the verdict of the jury, its officer may remove the prosecution to the supreme court, and there the verdict of the jury is to be of no effect, but the judges of this court are to decide upon the fact as well as the law, the same as in civil cases.

Thus, sir, jury trials, which have ever been the boast of the English constitution, which have been by our several State Constitutions so cautiously secured to us—jury trials which have so long been considered the surest barrier against arbitrary power, and the palladium of liberty—with the loss of which the loss of our freedom may be dated, are taken away by the proposed form of government, not only in a great variety of questions between individual and individual, but in every case whether civil or criminal, arising under the laws of the United States, or the execution of those laws. It is taken away in those very cases where of all others it is most essential for our liberty, to have it sacredly guarded and preserved, in every case, whether civil or criminal, between government and its officers on the one part, and the subject or citizen on the other. Nor was this the effect of inattention, nor did it arise from any real difficulty in establishing and securing jury trials by the proposed constitution, if the convention had wished so to do; but the same reason influenced here as in the case of the establishment of the inferior courts; as they could not trust State judges, so would they not confide in State juries. They alleged that the general government and the State governments would always be at variance; that the citizens of the different States would enter into the views and interests of their respective States, and therefore ought not to be trusted in determining causes in which the general government was any way interested, without giving the general government an opportunity, if it disapproved the verdict of the jury, to appeal, and to have the facts examined into again and decided upon by its own judges, on whom it was thought a reliance might be had by the general government, they being appointed under its authority.

Thus, sir, in consequence of this appellate jurisdiction and its extension to facts as well as to law, every arbitrary act of the general government, and every oppression of all that variety of officers appointed under its authority for the collection of taxes, duties, impost, excise, and other purposes, must be submitted to by the individual, or must be opposed with little prospect of success, and almost a certain pros-

pect of ruin, at least in those cases where the middle and common class of citizens are interested. Since to avoid that oppressor, or to obtain redress, the application must be made to one of the courts of the United States—by good fortune should this application be in the first instance attended with success, and should damages be recovered equivalent to the injury sustained, an appeal lies to the supreme court, in which case the citizen must at once give up his cause, or he must attend to it at the distance perhaps of more than a thousand miles from the place of his residence, and must take measures to procure before that court on the appeal all the evidence necessary to support his action, which even if ultimately prosperous must be attended with a loss of time, a neglect of business, and an expense which will be greater than the original grievance, and to which men in moderate circumstances would be utterly unequal.

By the third section of this article, it is declared, that treason against the United States, shall consist in levying war against them, or in adhering to their enemies giving them aid or comfort.

By the principles of the American revolution arbitrary power may, and ought to be resisted even by arms if necessary. The time may come when it shall be the duty of a State, in order to preserve itself from the oppression of the general government, to have recourse to the sword—in which case the proposed form of government declares, that the State and every one of its citizens who act under its authority, are guilty of a direct act of treason; reducing by this provision the different States to this alternative, that they must tamely and passively yield to despotism, or their citizens must oppose it at the hazard of the halter if unsuccessful—and reducing the citizens of the State which shall take arms, to a situation in which they must be exposed to punishment, let them act as they will, since if they obey the authority of their State government, they will be guilty of treason against the United States—if they join the general government they will be guilty of treason against their own State.

To save the citizens of the respective States from this disagreeable dilemma, and to secure them from being punishable as traitors to the United States, when acting expressly in obedience to the authority of their own State, I wished to have obtained as an amendment to the third section of this article, the following clause:

“Provided, That no act or acts done by one or more of the States against the United States, or by any citizen of any one of the United States under the authority of one or more of the said States, shall be deemed treason or punished as such; but in case of war being levied by one or more of the States against the United States, the conduct of each party towards the other, and their adherents respectively, shall be regulated by the laws of war and of nations.”

But this provision was not adopted, being too

much opposed to the great object of many of the leading members of the convention, which was by all means to leave the States, at the mercy of the general government, since they could not succeed in their immediate and entire abolition.

By the third section of the fourth article, no new State shall be formed or erected within the jurisdiction of any other State, without the consent of the legislature of such State.

There are a number of States which are so circumstanced, with respect to themselves and to the other States, that every principle of justice and sound policy requires their dismemberment or division into smaller States. Massachusetts is divided into two districts, totally separated from each other by the State of New Hampshire, on the north-east side of which lies the province of Maine and Sagadahock, more extensive in point of territory, but less populous than old Massachusetts, which lies on the other side of New Hampshire. No person can cast his eye on the map of that State but he must in a moment admit, that every argument drawn from convenience, interest, and justice, requires that the provinces of Maine and Sagadahock should be erected into a new State, and that they should not be compelled to remain connected with old Massachusetts under all the inconveniences of their situation.

The State of Georgia is larger in extent than the whole island of Great Britain, extending from its sea coast to the Mississippi, a distance of eight hundred miles or more; its breadth for the most part, about three hundred miles. The States of North Carolina and Virginia in the same manner reach from the sea coast to the Mississippi.

The hardship, the inconvenience, and the injustice of compelling the inhabitants of those States who may dwell on the western side of the mountains, and along the Ohio and Mississippi rivers to remain connected with the inhabitants of those States respectively, on the Atlantic side of the mountains, and subject to the same State governments, would be such, as would, in my opinion, justify even recourse to arms, to free themselves from, and to shake off so ignominious a yoke.

This representation was made in convention, and it was further urged, that the territory of these States was too large, and that the inhabitants thereof would be too much disconnected for a republican government to extend to them its benefits, which is only suited to a small and compact territory. That a regard also for the peace and safety of the Union, ought to excite a desire that those States should become in time divided into separate States, since when their population should become proportioned in degree to their territory, they would from their strength and power become dangerous members of a federal government. It was further said, that if the general government was not by its constitution to interfere, the inconvenience would soon remedy itself,

for that as the population increased in those States, their legislatures would be obliged to consent to the erection of new States to avoid the evils of a civil war; but as by the proposed constitution the general government is obliged to protect each State against domestic violence, and consequently will be obliged to assist in suppressing such commotions and insurrections as may take place from the struggle to have new States erected, the general government ought to have a power to decide upon the propriety and necessity of establishing or erecting a new State, even without the approbation of the legislature of such States, within whose jurisdiction the new State should be erected, and for this purpose I submitted to the convention the following proposition: "That on the application of the inhabitants of any district of territory within the limits of any of the States, it shall be lawful for the legislature of the United States, if they shall under all circumstances think it reasonable, to erect the same into a new State, and admit it into the Union without the consent of the State of which the said district may be a part." And it was said, that we surely might trust the general government with this power with more propriety than with many others with which they were proposed to be intrusted—and that as the general government was bound to suppress all insurrections and commotions which might arise on this subject, it ought to be in the power of the general government to decide upon it, and not in the power of the legislature of a single State, by obstinately and unreasonably opposing the erection of a new State to prevent its taking effect, and thereby extremely to oppress that part of its citizens, which live remote from, and inconvenient to the seat of its government, and even to involve the Union in war to support its injustice and oppression. But, upon the vote being taken, Georgia, South Carolina, North Carolina, Virginia, Pennsylvania, Massachusetts, were in the negative. New Hampshire, Connecticut, Jersey, Delaware, and Maryland, were in the affirmative. New York was absent.

That it was inconsistent with the rights of free and independent States, to have their territory dismembered without their consent, was the principal argument used by the opponents of this proposition. The truth of the objection we readily admitted, but at the same time insisted that it was not more inconsistent with the rights of free and independent States than that inequality of suffrage and power which the larger States had extorted from the others; and that if the smaller States yielded up their rights in that instance, they were entitled to demand from the States of extensive territory a surrender of their rights in this instance; and in a particular manner, as it was equally necessary for the true interest and happiness of the citizens of their own States, as of the Union. But, sir, although when the large States demanded undue and improper sacrifices to be

made to their pride and ambition, they treated the rights of free States with more contempt than ever a British parliament treated the rights of her colonial establishment; yet when a reasonable and necessary sacrifice was asked from them, they spurned the idea with ineffable disdain. They then perfectly understood the full value and the sacred obligation of State rights, and at the least attempt to infringe them where they were concerned, they were tremblingly alive and agonized at every pore.

When we reflect how obstinately those States contended for that unjust superiority of power in the government, which they have in part obtained, and for the establishment of this superiority by the constitution—when we reflect that they appeared willing to hazard the existence of the Union rather than not to succeed in their unjust attempt—that should their legislatures consent to the erection of new States within their jurisdiction, it would be an immediate sacrifice of that power, to obtain which they appeared disposed to sacrifice every other consideration. When we further reflect that they now have a motive for desiring to preserve their territory entire and unbroken, which they never had before—the gratification of their ambition in possessing and exercising superior power over their sister States—and that this constitution is to give them the means to effect this desire of which they were formerly destitute—the whole force of the United States pledged to them for restraining intestine commotions, and preserving to them the obedience and subjection of their citizens, even in the extremest part of their territory: I say, sir, when we consider these things, it would be too absurd and improbable to deserve a serious answer, should any person suggest that these States mean ever to give their consent to the erection of new States within their territory: some of them, it is true, have been for some time past, amusing their inhabitants in those districts that wished to be erected into new States, but should this constitution be adopted armed with a sword and halber, to compel their obedience and subjection, they will no longer act with indecision; and the State of Maryland may, and probably will be called upon to assist with her wealth and her blood in subduing the inhabitants of Franklin, Kentucky, Vermont, and the provinces of Maine, and Sagadahock, in compelling them to continue in subjection to the States which respectively claim jurisdiction over them.

Let it not be forgotten at the same time, that a great part of the territory of these large and extensive States, which they now hold in possession, and over which they now claim and exercise jurisdiction, were crown lands, unlocated and unsettled when the American revolution took place—lands which were acquired by the common blood and treasure, and which ought to have been the common stock, and for the common benefit of the Union. Let it be

remembered that the State of Maryland was so deeply sensible of the injustice that these lands should be held by particular States for their own emolument, even at a time when no superiority of authority or power was annexed to extensive territory, that in the midst of the late war and all the dangers which threatened us, it withheld for a long time its assent to the articles of confederation for that reason, and when it ratified those articles it entered a solemn protest against what it considered so flagrant injustice: but, sir, the question is not now whether those States shall hold that territory unjustly to themselves, but whether by that act of injustice they shall have superiority of power and influence over the other States, and have a constitutional right to domineer and lord it over them—nay, more, whether we will agree to a form of government, by which we pledge to those States the whole force of the Union to preserve to them their extensive territory entire and unbroken, and with our blood and wealth to assist them, whenever they please to demand it, to preserve the inhabitants thereof under their subjection, for the purpose of increasing their superiority over us—of gratifying their unjust ambition—in a word, for the purpose of giving ourselves masters, and of riveting our chains!

The part of the system, which provides that no religious test shall ever be required as a qualification to any office or public trust under the United States, was adopted by a great majority of the convention, and without much debate—however, there were some members so unfashionable as to think that a belief of the existence of a Deity, and of a state of future rewards and punishments would be some security for the good conduct of our rulers, and that in a Christian country it would be at least decent to hold out some distinction between the professors of Christianity, and downright infidelity or paganism.

The seventh article declares, that the ratification of nine States shall be sufficient for the establishment of this constitution, between the States ratifying the same.

It was attempted to obtain a resolve that if seven States, whose votes in the first branch should amount to a majority of the representation in that branch, concurred in the adoption of the system, it should be sufficient, and this attempt was supported on the principle, that a majority ought to govern the minority: but to this it was objected, that although it was true, after a constitution and form of government is agreed on, in every act done under and consistent with that constitution and form of government, the act of the majority, unless otherwise agreed in the constitution, should bind the minority, yet it was directly the reverse in originally forming a constitution, or dissolving it—that in originally forming a constitution, it was necessary that every individual should agree to it to become bound thereby—and that when once adopted, it could not be dissolved by

consent, unless with the consent of every individual who was party to the original agreement—that in forming our original federal government, every member of that government, that is, each State, expressly consented to it; that it is a part of the compact made and entered into in the most solemn manner, that there should be no dissolution or alteration of that federal government without the consent of every State, the members of, and parties to, the original compact; that therefore no alteration could be made by the consent of a part of these States, or by the consent of the inhabitants of a part of the States, which could either release the States so consenting, from the obligation they are under to the other States, or which could in any manner become obligatory upon those States that should not ratify such alterations. Satisfied of the truth of these positions, and not holding ourselves at liberty to violate the compact, which this State had solemnly entered into with the others, by altering it in a different manner from that which by the same compact is provided and stipulated, a number of the members, and among those the delegation of this State, opposed the ratification of this system in any other manner than by the unanimous consent and agreement of all the States.

By our original articles of confederation any alterations proposed are in the first place to be approved by Congress. Accordingly, as the resolutions were originally adopted by the convention, and as they were reported by the committee of detail, it was proposed that this system should be laid before Congress, for their approbation; but, sir, the warm advocates of this system fearing it would not meet with the approbation of Congress, and determined even though Congress and the respective State legislatures should disapprove the same, to force it upon them, if possible, through the intervention of the people at large, moved to strike out the words “for their approbation,” and succeeded in their motion; to which, it being directly in violation of the mode prescribed by the articles of confederation for the alteration of our federal government, a part of the convention, and myself in the number, thought it a duty to give a decided negative.

Agreeably to the articles of confederation, entered into in the most solemn manner, and for the observance of which the States pledged themselves to each other, and called upon the Supreme Being as a witness and avenger between them, no alterations are to be made in those articles, unless after they are approved by Congress, they are agreed to, and ratified by the legislature of every State; but by the resolve of the convention this constitution is not to be ratified by the legislatures of the respective States, but is to be submitted to conventions chosen by the people, and if ratified by them, is to be binding.

This resolve was opposed among others by the delegation of Maryland; your delegates

were of opinion, that as the form of government proposed was, if adopted, most essentially to alter the constitution of this State, and as our constitution had pointed out a mode by which, and by which only, alterations were to be made therein, a convention of the people could not be called to agree to and ratify the said form of government without a direct violation of our constitution, which it is the duty of every individual in this State to protect and support. In this opinion, all your delegates who were attending were unanimous. I, sir, opposed it also upon a more extensive ground, as being directly contrary to the mode of altering our federal government established in our original compact; and, as such, being a direct violation of the mutual faith plighted by the States to each other, I gave it my negative.

I was of opinion that the States considered as States, in their political capacity, are the members of a federal government; that the States in their political capacity, or as sovereignties, are entitled, and only entitled originally to agree upon the form of, and submit themselves to, a federal government, and afterwards by mutual consent to dissolve or alter it: That every thing which relates to the formation, the dissolution, or the alteration of a federal government over States equally free, sovereign, and independent, is the peculiar province of the States in their sovereign or political capacity, in the same manner as what relates to forming alliances or treaties of peace, amity, or commerce, and that the people at large in their individual capacity, have no more right to interfere in the one case than in the other: That according to these principles, we originally acted in forming our confederation; it was the States as States, by their representatives in Congress, that formed the articles of confederation; it was the States as States, by their legislatures, who ratified those articles, and it was there established and provided, that the States as States, that is, by their legislatures, should agree to any alterations that should hereafter be proposed in the federal government, before they should be binding—and any alterations agreed to in any other manner cannot release the States from the obligation they are under to each other by virtue of the original articles of confederation. The people of the different States never made any objection to the manner in which the articles of confederation were formed or ratified, or to the mode by which alterations were to be made in that government—with the rights of their respective States they wished not to interfere. Nor do I believe the people, in their individual capacity, would ever have expected or desired to have been appealed to on the present occasion, in violation of the rights of their respective States, if the favorers of the proposed constitution, imagining they had a better chance of forcing it to be adopted by a hasty appeal to the people at large (who could not be so good judges of the dangerous consequence), had not insisted upon this mode. Nor do these posi-

tions in the least interfere with the principle, that all power originates from the people, because when once the people have exercised their power, in establishing and forming themselves into a State government, it never devolves back to them, nor have they a right to resume or again to exercise that power until such events take place as will amount to a dissolution of their State government:—And it is an established principle, that a dissolution or alteration of a federal government doth not dissolve the State governments which compose it. It was also my opinion, that upon principles of sound policy, the agreement or disagreement to the proposed system, ought to have been by the State legislatures, in which case, let the event have been what it would, there would have been but little prospect of the public peace being disturbed thereby—Whereas, the attempt to force down this system, although Congress and the respective State legislatures should disapprove, by appealing to the people, and to procure its establishment in a manner totally unconstitutional, has a tendency to set the State governments and their subjects at variance with each other—to lessen the obligations of government—to weaken the bands of society—to introduce anarchy and confusion—and to light the torch of discord and civil war throughout this continent. All these considerations weighed with me most forcibly against giving my assent to the mode by which it is resolved that this system is to be ratified, and were urged by me in opposition to the measure.

I have now, sir, in discharge of the duty I owe to this House, given such information as hath occurred to me, which I consider most material for them to know; and you will easily perceive from this detail, that a great portion of that time, which ought to have been devoted calmly and impartially to consider what alterations in our federal government would be most likely to procure and preserve the happiness of the Union, was employed in a violent struggle on the one side to obtain all power and dominion in their own hands, and on the other to prevent it; and that the aggrandizement of particular States, and particular individuals, appears to have been much more the subject sought after than the welfare of our country.

The interest of this State, not confined merely to itself, abstracted from all others, but considered relatively, as far as was consistent with the common interest of the other States, I thought it my duty to pursue according to the best opinion I could form of it.

When I took my seat in the convention, I found them attempting to bring forward a system, which I was sure never had entered into the contemplation of those I had the honor to represent, and which, upon the fullest consideration, I considered not only injurious to the interest and rights of this State, but also incompatible with the political happiness and freedom of the States in general; from that time until my

business compelled me to leave the convention, I gave it every possible opposition in every stage of its progression. I opposed the system there with the same explicit frankness with which I have here given you a history of our proceedings, and an account of my own conduct, which in a particular manner I consider you as having a right to know—while there I endeavored to act as became a freeman, and the delegate of a free State. Should my conduct obtain the approbation of those who appointed me, I will not deny it would afford me satisfaction; but to me that approbation was at most no more than a secondary consideration—my first was to deserve it; left to myself to act according to the best of my discretion, my conduct should have been the same, had I been ever sure your censure would have been my only reward, since I hold it sacredly my duty to dash the cup of poison, if possible, from the hand of a State, or an individual, however anxious the one or the other might be to swallow it.

Indulge me, sir, in a single observation further:—There are persons who endeavor to hold up the idea, that this system is only opposed by the officers of government. I, sir, am in that predicament. I have the honor to hold an appointment in this State. Had it been considered any objection, I presume I should not have been appointed to the convention; if it could have had any effect on my mind, it would only be that of warming my heart with gratitude, and rendering me more anxious to promote the true interest of that State, which has conferred on me the obligation, and to heighten my guilt had I joined in sacrificing its essential rights: but, sir, it would be well to remember, that this system is not calculated to diminish the number of the value of offices, on the contrary, if adopted, it will be productive of an enormous increase in their number; many of them will also be of great honor and emoluments. Whether, sir, in this variety of appointments, and in the scramble for them, I might not have as good a prospect to advantage myself as many others, is not for me to say; but this, sir, I can say with truth, that so far was I from being influenced in my conduct by interest, or the consideration of office, that I would cheerfully resign the appointment I now hold, I would bind myself never to accept another, either under the general government or that of my own State: I would do more sir, so destructive do I consider the present system to the happiness of my country, I would cheerfully sacrifice that share of property with which heaven has blessed a life of industry—I would reduce myself to indigence and poverty, and those who are dearer to me than my own existence, I would intrust to the care and protection of that Providence who hath so kindly protected myself, if on those terms only, I could procure my country to reject those chains which are forged for it.

## OLIVER ELLSWORTH.

CHIEF JUSTICE ELLSWORTH was a native of the ancient town of Windsor, in Connecticut, where he was born on the twenty-ninth of April, 1745. His father was a plain and frugal farmer, inured to the hardships of early colonial life, and educated his son in that simple and regular mode, so characteristic of the colonists of Connecticut, and so well calculated to prepare men for the struggles, dangers and exigencies of a great revolution. The youth of Mr. Ellsworth was passed alternately in the labors of the farm, and the preparatory studies of a liberal education. He entered Yale College at the age of seventeen years, and after spending some time there removed to the College of New Jersey, where he graduated and received his first degree late in September, 1766.\* Three years after he was admitted to the bar of his native State, and immediately entered upon the duties of his profession in the county of Hartford. An anecdote of his practice at this period is preserved. His father presented him with a small farm, situated in the south-western corner of Windsor, and in the management of this and the few suits with which his acquaintances and friends intrusted him, his ardent and active mind was forced for a time to content itself. As often as the session of the court occurred at Hartford, leaving his farm and revolving his cases in his mind, he travelled thither on foot, and back again in the same manner, when the season was over. Soon, however, a suit was committed to his management, of trivial importance, indeed, so far as concerned the pecuniary interest at stake, but at the same time involving the decision of a legal principle of the deepest moment. Young Oliver proved himself equal to the emergency; and by the ability and skill he exhibited in the conduct of the suit, at once established his reputation on a permanent basis, and he took his stand among the most promising and talented of the younger members of his profession at the Hartford bar.†

The jurisprudence of Connecticut, after a long period of doubtfulness and obscurity, had, a short time prior to Mr. Ellsworth's entrance upon professional life, assumed a regular form, and a mode of practice, sufficiently accurate for every ordinary purpose, was then settled. With this era of legal reform he commenced practice. His general or professional learning was not extensive; but the native vigor of his mind supplied every deficiency; the rapidity of his conceptions fully answered for the want of previous knowledge; the diligent study of the cases which arose in actual business, enriched his mind with principles; whatever was thus acquired was firmly rooted in his memory, and thus, as he became eminent he grew learned. It would seem, that no ambition of distinction had at this time stimulated his career. Perhaps his mind was not fully aware of its own splendid powers. Its incentive had been the consciousness of duty, and a desire to make provision for his young and growing family;—but, “during a period of extreme exertion, while sustaining a difficult cause, he received a new incentive—the voice of praise. ‘Who is that young man? He speaks well.’ These were the words of a stranger,

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\* An interesting account of the exercises on the occasion of Mr. Ellsworth's graduation, is published in the *New York Gazette*, or *Weekly Post-Boy*, of October 2, 1766.

† Sketches of the Lives and Judicial Services of the Chief Justices of the Supreme Court of the United States, by George Van Santvoord, page 196.

and they sank into his heart. As he went homeward he ruminated upon them. 'He speaks well,' was a new idea to him. Vanity was not an inherent to an intellect of his order, but the sweetness of merited praise came when it began to be needed as an encouragement on its arduous course." Of this incident he often spoke, even in his latest years, to his descendants.

The whole powers of Mr. Ellsworth's mind were applied with assiduous and constant attention to the business of his profession, and those public duties in which he was occasionally engaged. "Capable of great application," says a graceful writer, "and constitutionally full of ardor, he pursued every object to which he applied himself with a strong and constant interest, which never suffered his mind to flag or grow torpid with listless indolence. But his ardor was always under the guidance of sober reason. His cold and colorless imagination never led him astray from the realities of life to wanton in the gay visions of fancy; and his attention was seldom attracted by that general literary curiosity which so often beguiles the man of genius away from his destined pursuit, to waste his powers in studies of no immediate personal utility. At the same time his unblemished character, his uniform prudence and regularity of conduct, acquired him the general confidence and respect of his fellow-citizens—a people in a remarkable degree attentive to all the decorum and decencies of civilized life. He very soon rose into high reputation and lucrative practice; and before he had been long at the bar received the appointment of State's Attorney for the district of Hartford, an office at that time of very considerable emolument. This he continued to hold during the greater part of the revolutionary war. From the very commencement of that contest he declared himself resolutely on the side of his country; and on two or three occasions, when Connecticut was harassed by the incursions of the enemy, went out with the militia of his country into actual service, more, however, for the sake of example, than from any particular inclination to military life. For several sessions in the years immediately preceding the declaration of independence, he represented the town in which he resided in the General Assembly of the State, with great reputation, and took a large share, not only in the ordinary business of the House, but also in all those public acts and declarations which were called forth by the peculiar circumstances of the times. About the commencement of the war he presided for a short time at the *pay-table*, as it was called, or office of public accounts of the State of Connecticut." \*

Mr. Ellsworth was elected a delegate to the Continental Congress in October, 1777, but he did not take his seat in that assembly until the eighth of the same month of the following year. Previous to his arrival at the Congress he was appointed by that body, with William Whipple, Robert Treat Paine, Egbert Benson, and Henry Marchant, a committee to conduct an inquiry into the causes of the failure of the expedition against Rhode Island, then in the hands of the British, and to discover the conduct of the general officers commanding that undertaking.† He was also appointed upon several other important committees, where he distinguished himself by his unwearied exertions and steady application to the discharge of his duties. He was placed on the Marine committee, on the day following his attendance at the Congress,‡ and remained in that station during the greater part of his term of office. He was also a member of the Committee of Appeals,§ which, until the establishment of a court for that purpose, in the year 1780, examined and reported to Congress upon all appeals from the decisions of the several courts of admiralty erected in the different States.

In 1780 Mr. Ellsworth returned to his home, and soon after was elected a member of the State Council; in which office he continued by re-election until 1784, when he was elected to the judgeship of the Superior Court. The duties of this position he discharged with great ability and reputation for several years. In 1787 he was chosen by the legislature to represent the State of Connecticut in the Federal Convention, and, after the formation of the Constitution, he was elected by the people to the State Convention, to decide upon its adoption or rejection.

\* From an original biographical sketch of Judge Ellsworth, published in the *Analectic Magazine*, for May, 1814.

† *Journals of Congress*, December 11th, 1777.

‡ This committee acted as a Board of Admiralty, and had the general superintendence of the naval affairs of the United States, until the end of the year 1779.—*Journals of Congress*, October 9th, 1778.

§ *Journals of Congress*, October 26th, 1778.



On the ratification of the Constitution, he became a member of the United States Senate, which met at New York in 1789. His great powers of intellect and brilliant legal attainments, were now called into operation for the good of the whole country. In the organization of the judiciary, the several departments of State, and all those schemes of national policy, which were formed under the administration of Washington, his services were extensive and of the highest consequence.

Early in the spring of 1796, on the resignation of Chief Justice Jay, Mr. Ellsworth was appointed to fill the vacancy. The character of his mind, his habits of patient and laborious investigation, his sound judgment, and large experience, rendered him eminently fitted for that station. He soon attained an elevated position in the confidence of the people and the estimation of the bar; and, in a period of violent party rancor, the purity and impartiality of his judicial character was untarnished even by suspicion. He continued on the bench of the Supreme Court until the end of 1799, when he, with Governor Davie\* and William Vans Murray, was appointed on a mission to France. After concluding the duties of this office, he visited England, where he received the most marked attention from many of the leading men of that nation. Curiosity to see an American chief justice, drew about him many of the most eminent lawyers and judges. "One of these, an old lawyer, high in office, whose whole life had been spent in the unvarying routine of the business of Westminster Hall, and whose mind, rendered by long and uninterrupted habit perfectly technical, presented a curious contrast to the various talents and diversified pursuits of the chief justice, is said, immediately upon his introduction, to have accosted him with, 'Pray, chief justice, in what cases do the half-blood in America take by descent?' "†

Failing in health, and rendered by that circumstance unable to endure the arduous labors of his judicial position, Judge Ellsworth transmitted a resignation of his chief justiceship to President Adams, and, on returning to America, retired to his home at Windsor. In 1802, he was elected a member of the State Council of Connecticut, and continued to perform the duties incident to that position, until his death. He was appointed chief justice of his native State in 1807, but the infirmities of age led him to decline the proffered honor. Shortly after he was seized with a violent illness, which terminated his life on the twenty-sixth of November, 1807.

In the elevated course assigned to Chief Justice Ellsworth, he moved not only secure from the tongue of slander, and without a blot upon his fame, but with that true dignity, which always accompanies real greatness. From his appearance as an advocate at the bar, in early life, to the day of his death, in the discharge of all the high trusts which were imposed upon him, his sound discretion, his manly and irresistible eloquence, his incorruptible integrity, and his profound wisdom, were every where seen, every where acknowledged, and at all times, by all good men, justly respected and admired. He loved his country; he knew her true interests, and he pursued them with that firmness, that independence, that intrepidity and skill, which constitute the civilian, the statesman, and the real patriot. In his death the United States lost one of her best and greatest men.‡

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\* William Richardson Davie, was born at the village of Egremont, near Whitehaven, England, June 20, 1756. He came to this country in 1783, and was graduated at Princeton College in 1778. Soon afterwards he entered the army as an officer in the cavalry of Count Pulaski's legion. By his talents and zeal he soon rose to the rank of Colonel. He fought at Stono, where he was severely wounded, at Hanging-Rock, and Rocky Mount. Having great strength and activity, it was his delight to lead a charge and to engage in personal conflict. At the period of Gates's defeat, he expended the last shilling of an estate, bequeathed him by his uncle, Rev. William Richardson, in equipping the legionary corps, which he commanded. Greene appointed him a commissary. During the whole struggle, he displayed great zeal and energy. After the war, he devoted himself to the profession of the law at Halifax, on the Roanoke, and rose to eminence. He was a member of the Convention which formed the Constitution of the United States, though his absence prevented his name from being affixed to it: and in the Convention of North Carolina, he was an able advocate for its acceptance. Through his efforts, the University of North Carolina was established. In 1799, he was elected governor, but was soon after appointed by President Adams, Envoy to France, with Ellsworth and Murray. He died at Camden, November 8, 1820, aged 64 years.

—*Lee's Memoirs.*

† *Analectic Magazine*, vol. 3, page 397.

‡ *New York Evening Post*, 1807: *Allen's Biographical Dictionary*.

## FEDERAL CONSTITUTION.

Chief Justice Ellsworth delivered the following Speech, at the opening of the debates on the Federal Constitution, in the Convention of the State of Connecticut, on the fourth of January, 1788:

**MR. PRESIDENT:** It is observable that there is no preface to the proposed Constitution; but it evidently presupposes two things; one is, the necessity of a federal government; the other is the inefficiency of the old Articles of Confederation. A union is necessary for the purposes of a national defence. United, we are strong; divided, we are weak. It is easy for hostile nations to sweep off a number of separate states one after another. Witness the states in the neighborhood of ancient Rome. They were successively subdued by that ambitious city, which they might have conquered with the utmost ease, if they had been united.

Witness the Canaanitish nations, whose divided situation rendered them an easy prey. Witness England, which, when divided into separate states, was twice conquered by an inferior force. Thus it always happens to small states, and to great ones, if divided. Or, if to avoid this, they connect themselves with some powerful state, their situation is not much better. This shows us the necessity of combining our whole force, and, as to national purposes, becoming one State.

A union, sir, is likewise necessary, considered with relation to economy. Small states have enemies, as well as great ones. They must provide for their defence. The expense of it, which would be moderate for a large kingdom, would be intolerable to a petty state. The Dutch are wealthy; but they are one of the smallest of the European nations; and their taxes are higher than in any other country of Europe. The taxes amount to forty shillings per head, when those of England do not exceed half that sum.

We must unite in order to preserve peace among ourselves. If we be divided, what is to prevent wars from breaking out among the States? States, as well as individuals, are subject to ambition, to avarice, to those jarring passions which disturb the peace of society. What is to check these? If there be a parental hand over the whole, this, and nothing else, can restrain the unruly conduct of members.

Union is necessary to preserve commutative justice between the States. If divided, what is to prevent the large States from oppressing the small? What is to defend us from the ambition and rapacity of New York, when she has spread over that vast territory which she claims and holds? Do we not already see in her the seeds of an overbearing ambition? On our other side, there is a large and powerful State.

Have we not already begun to be tributaries! If we do not improve the present critical time—if we do not unite—shall we not be like Issachar of old, a strong ass crouching down between two burdens? New Jersey and Delaware have seen this, and have adopted the constitution unanimously.

A more energetic system is necessary. The present is merely advisory. It has no coercive power. Without this, government is ineffectual, or rather is no government at all. But it is said, "Such a power is not necessary. States will not do wrong. They need only to be told their duty, and they will do it." I ask, sir, what warrant is there for this assertion? Do not states do wrong? Whence come wars? One of two hostile nations must be in the wrong. But, it is said, "Among sister states, this can never be presumed." But do we not know that, when friends become enemies, their enmity is the most virulent? The seventeen provinces of the Netherlands were once confederated; they fought under the same banner. Antwerp, hard pressed by Philip, applied to the other states for relief. Holland, a rival in trade, opposed and prevented for the needy, succors. Antwerp was made a sacrifice. I wish I could say there were no seeds of similar injustice springing up among us. Is there not in one of our States, injustice too barefaced for Eastern despotism? That State is small; it does little hurt to any but itself. But it has a spirit which would make a Tophet of the universe. But some will say, "We formerly did well without any union." I answer, our situation is materially changed. While Great Britain held her authority, she awed us. She appointed governors and councils for the American provinces. She had a negative upon our laws. But now our circumstances are so altered, that there is no arguing what we shall be, from what we have been.

It is said, that other confederacies have not had the principle of coercion. Is this so? Let us attend to those confederacies which have resembled our own. Some time before Alexander, the Grecian states confederated together. The Amphictyonic council, consisting of deputies from these states, met at Delphos, and had authority to regulate the general interests of Greece. This council did enforce its decrees by coercion. The Boeotians once infringed upon a decree of the Amphictyons. A mulct was laid upon them. They refused to pay it. Upon that, their whole territory was confiscated. They were then glad to compound the matter. After the death of Alexander, the Achæan league was formed. The decrees of this confederacy were enforced by dint of arms. The Ætolian league was formed by some other Grecian cities, in opposition to the Achæan; and there was no peace between them until

they were conquered and reduced to a Roman province. They were then obliged to sit down in peace under the same yoke of despotism.

How is it with respect to the principle of coercion in the Germanic body? In Germany there are about three hundred principalities and republics. Deputies from these meet annually in the general Diet, to make regulations for the empire. But the execution of these is not left voluntarily with the members. The empire is divided into ten circles, over each of which a superintendent is appointed, with the rank of a major-general. It is his duty to execute the decrees of the empire with a military force.

The Confederation of the Swiss Cantons has been considered as an example. But their circumstances are far different from ours. They are small republics about twenty miles square, situated among the Alps, and inaccessible to hostile attacks. They have nothing to tempt an invasion. Till lately, they had neither commerce nor manufactures. They were merely a set of herdsmen. Their inaccessibility has availed them. Four hundred of those mountaineers defeated 15,000 Austrians, who were marching to subdue them. They spend the ardor of youth in foreign service: they return old, and disposed for tranquillity. Between some of the cantons and France, there has long subsisted a defensive treaty. By this treaty, France is to be a mediator to settle differences between the cantons. If any one be obstinate, France is to compel a submission to reasonable terms.

The Dutch republic is an example that merits attention. The form of their constitution, as it is on paper, admits not of coercion. But necessity has introduced it in practice. This coercive power is the influence of the stadtholder, an officer originally unknown to their constitution. But they have been necessitated to appoint him, in order to set their unwieldy machine of government in motion. He is commander-in-chief of their navy, and of their army, consisting of forty or fifty regiments. He appoints the officers of the land and naval forces. He presides in the States General, and in the states of every province; and, by means of this he has a great opportunity to influence the elections and decisions. The province of Holland has ever been opposed to the appointment of a stadtholder; because by its wealth and power, being equal to all the other provinces, it possesses the weight and influence of the stadtholder, when that office is vacant. Without such an influence, their machine of government would no more move, than a ship without a wind, or a clock without weights.

But to come nearer home. Mr. President, have we not seen and felt the necessity of such a coercive power? What was the consequence of the want of it during the late war, particularly towards the close? A few States bore the burden of the war. While we and one or two more of the States were paying eighty or a

hundred dollars per man to recruit the Continental army, the regiments of some States had scarcely men enough to wait on their officers. Since the close of the war, some of the States have done nothing towards complying with the requisitions of Congress. Others, who did something at first, seeing that they were left to bear the whole burden, have become equally remiss. What is the consequence? To what shifts have we been driven? To the wretched expedient of negotiating new loans in Europe, to pay the interest of the foreign debts. And what is still worse, we have been obliged to apply the new loans to the support of our own civil government at home.

Another ill consequence of this want of energy is, that treaties are not performed. The treaty of peace with Great Britain was a very favorable one for us. But it did not happen perfectly to please some of the States, and they would not comply with it. The consequence is, Britain charges us with the breach, and refuses to deliver up the forts on our northern quarter.

Our being tributaries to our sister States is in consequence of the want of a federal system. The State of New York raises 60 or £80,000 a year by impost. Connecticut consumes about one-third of the goods upon which this impost is laid, and consequently pays one-third of this sum to New York. If we import by the medium of Massachusetts, she has an impost, and to her we pay a tribute. If this is done when we have the shadow of a national government, what shall we not suffer when even that shadow is gone?

If we go on as we have done, what is to become of the foreign debt? Will sovereign nations forgive us this debt, because we neglect to pay? or will they levy it by reprisals, as the laws of nations authorize them? Will our weakness induce Spain to relinquish the exclusive navigation of the Mississippi or the territory which she claims on the east side of that river? Will our weakness induce the British to give up the northern posts? If a war breaks out, and our situation invites our enemies to make war, how are we to defend ourselves? Has government the means to enlist a man or to buy an ox? Or shall we rally the remainder of our old army? The European nations I believe to be not friendly to us. They were pleased to see us disconnected from Great Britain; they are pleased to see us disunited among ourselves. If we continue so, how easy is it for them to canton us out among them, as they did the kingdom of Poland! But supposing this is not done, if we suffer the Union to expire, the least that may be expected is, that the European powers will form alliances, some with one State and some with another, and play the States off one against another, and that we shall be involved in all the labyrinth of European politics. But I do not wish to continue the painful recital; enough has been said to show that a power in the general gov-

ernment to enforce the decrees of the Union is absolutely necessary.

The Constitution before us is a complete system of legislative, judicial, and Executive

power. It was designed to supply the defects of the former system; and I believe, upon a full discussion, it will be found calculated to answer the purposes for which it was designed.

#### ON THE POWER OF CONGRESS TO LEVY TAXES.\*

MR. PRESIDENT: This is a most important clause in the Constitution; and the gentlemen do well to offer all the objections which they have against it. Through the whole of this debate, I have attended to the objections which have been made against this clause; and I think them all to be unfounded. The clause is general; it gives the general legislature "power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." There are three objections against this clause—first, that it is too extensive, as it extends to all the objects of taxation; secondly, that it is partial; thirdly, that Congress ought not to have power to lay taxes at all.

The first objection is, that this clause extends to all the objects of taxation. But though it does extend to all, it does not extend to them exclusively. It does not say that Congress shall have all these sources of revenue, and the States none. All excepting the impost, still lie open to the States. This State owes a debt; it must provide for the payment of it. So do all the other States. This will not escape the attention of Congress. When making calculations to raise a revenue, they will bear this in mind. They will not take away that which is necessary for the States. They are the head, and will take care that the members do not perish. The State debt, which now lies heavy upon us, arose from the want of powers in the federal system. Give the necessary powers to the national government, and the State will not be again necessitated to involve itself in debt for its defence in war. It will lie upon the national government to defend all the States, to defend all its members, from hostile attacks. The United States will bear the whole burden of war. It is necessary that the power of the general legislature should extend to all the objects of taxation, that government should be able to command all the resources of the country; because no man can tell what our exigencies may be. Wars have now become rather wars of the purse than of the sword. Government must, therefore, be able to command the whole power of the purse; otherwise a hostile nation may look into our Constitution, see what resources are in the power of government,

and calculate to go a little beyond us; thus they may obtain a decided superiority over us, and reduce us to the utmost distress. A government which can command but half its resources is like a man with but one arm to defend himself.

The second objection is, that the impost is not a proper mode of taxation; that it is partial to the Southern States. I confess I am mortified when I find gentlemen supposing that their delegates in Convention, were inattentive to their duty, and made a sacrifice of the interests of their constituents. If, however, the impost be a partial mode, this circumstance, high as my opinion of it is, would weaken my attachment to it; for I abhor partiality. But I think there are three special reasons why an impost is the best way of raising a national revenue.

The first is, it is the most fruitful and easy way. All nations have found it to be so. Direct taxation can go but little way towards raising a revenue. To raise money in this way, people must be provident; they must constantly be laying up money to answer the demands of the collector. But you cannot make people thus provident. If you do any thing to the purpose, you must come in when they are spending, and take a part with them. This does not take away the tools of a man's business, or the necessary utensils of his family: it only comes in when he is taking his pleasure, and feels generous; when he is laying out a shilling for superfluities, it takes twopence of it for public use, and the remainder will do him as much good as the whole. I will instance two facts which show how easy and insensibly a revenue is raised by indirect taxation. I suppose people in general are not sensible that we pay a tax to the State of New York. Yet it is an incontrovertible fact, that we, the people of Connecticut, pay annually into the treasury of New York more than fifty thousand dollars. Another instance I will mention; one of our common river sloops pays in the West Indies, a portage bill of £60. This is a tax which foreigners lay upon us, and we pay it; for a duty laid upon our shipping, which transports our produce to foreign markets, sinks the price of our produce, and operates as an effectual tax upon those who till the ground and bring the fruits of it to market. All nations have seen the necessity and propriety of raising a revenue by indirect taxation, by duties upon articles of consumption. France raises a

\* Speech delivered by Chief Justice Ellsworth, in the Connecticut Convention, January 7, 1788.

revenue of twenty-four millions sterling per annum; and it is chiefly in this way. Fifty millions of livres they raise upon the single article of salt. The Swiss Cantons raise almost the whole of their revenue upon salt. Those states purchase all the salt which is to be used in the country: they sell it out to the people at an advanced price; the advance is the revenue of the country. In England, the whole public revenue is about twelve millions sterling per annum. The land tax amounts to about two millions; the window, and some other taxes, to about two millions more. The other eight millions are raised upon articles of consumption. The whole standing army of Great Britain could not enforce the collection of this vast sum by direct taxation. In Holland, their prodigious taxes, amounting to forty shillings for each inhabitant, are levied chiefly upon articles of consumption. They excise every thing, not even excepting their houses of infamy.

The experiments, which have been made in our own country, show the productive nature of indirect taxes. The imports into the United States amount to a very large sum. They will never be less, but will continue to increase for centuries to come. As the population of our country increases, the imports will necessarily increase. They will increase because our citizens will choose to be farmers, living independently on their freeholds, rather than to be manufacturers, and work for a groat a day. I find by calculation, that a general impost of 5 per cent. would raise the sum of £245,000 per annum, deducting 8 per cent. for the charges of collecting. A further sum might be deducted for smuggling—a business which is too well understood among us, and which is looked upon in too favorable a light. But this loss in the public revenue will be overbalanced by an increase of importations. And a further sum may be reckoned upon some articles which will bear a higher duty than the one recommended by Congress. Rum, instead of 4*d.* per gallon, may be set higher without any detriment to our health or morals. In England, it pays a duty of 4*s.* 6*d.* the gallon. Now, let us compare this source of revenue with our national wants. The interest of the foreign debt is £130,000 lawful money, per annum. The expenses of the civil list, are £37,000. There are likewise further expenses for maintaining the frontier posts, for the support of those who have been disabled in the service of the continent, and some other contingencies, amounting together with the civil list, to £130,000. This sum, added to the interest of the foreign debt, will be £260,000. The consequence follows, that the avails of the impost will pay the interest of the whole foreign debt, and nearly satisfy those current national expenses. But perhaps it will be said that these paper calculations are overdone, and that the real avails will fall far short. Let me point out, then, what has actually been done. In only three of the States, in

Massachusetts, New York, and Pennsylvania, 160, or £180,000 per annum have been raised by impost. From this fact, we may certainly conclude that, if a general impost should be laid, it would raise a greater sum than I have calculated. It is a strong argument in favor of an impost, that the collection of it will interfere less with the internal police of the States than any other species of taxation. It does not fill the country with revenue officers, but is confined to the sea-coast, and is chiefly a water operation. Another weighty reason in favor of this branch of the revenue is, if we do not give it to Congress, the individual States will have it. It will give some States an opportunity of oppressing others, and destroy all harmony between them. If we would have the States friendly to each other, let us take away this bone of contention, and place it, as it ought in justice to be placed, in the hands of the general government.

"But," says an honorable gentleman near me, "the impost will be a partial tax; the Southern States will pay but little in comparison with the Northern." I ask, What reason is there for this assertion? Why, says he, we live in a cold climate, and want warming. Do not they live in a hot climate, and want quenching? Until you get as far south as the Carolinas, there is no material difference in the quantity of clothing which is worn. In Virginia, they have the same course of clothing that we have; in Carolina, they have a great deal of cold, raw, chilly weather; even in Georgia, the river Savannah has been crossed upon the ice. And if they did not wear quite so great a quantity of clothing, in those States as with us, yet people of rank wear that which is of a much more expensive kind. In these States, we manufacture one-half of our clothing, and all our tools of husbandry; in those, they manufacture none, nor ever will. They will not manufacture, because they find it much more profitable to cultivate their lands, which are exceedingly fertile. Hence they import almost every thing, not excepting the carriages in which they ride, the hoes with which they till the ground, and the boots which they wear. If we doubt of the extent of their importations, let us look at their exports. So exceedingly fertile and profitable are their lands, that a hundred large ships are every year loaded with rice and indigo from the single port of Charleston. The rich return of these cargoes of immense value will be all subject to the impost. Nothing is omitted; a duty is to be paid upon the blacks which they import. From Virginia, their exports are valued at a million sterling per annum; the single article of tobacco amounts to seven or eight hundred thousand. How does this come back? Not in money; for the Virginians are poor, to a proverb, in money. They anticipate their crops; they spend faster than they earn; they are ever in debt. Their rich exports return in eatables, in drinkables, and in wearables. All these are subject to the

impost. In Maryland, their exports are as great in proportion as those in Virginia. The imports and exports of the Southern States are quite as great in proportion as those of the Northern. Where, then, exists this partiality, which has been objected? It exists nowhere but in the uninformed mind.

But there is one objection, Mr. President, which is broad enough to cover the whole subject. Says the objector, Congress ought not to have power to raise any money at all. Why? Because they have the power of the sword; and if we give them the power of the purse, they are despotic. But I ask, sir, if ever there were a government without the power of the sword and the purse? This is not a new coined phrase; but it is misapplied; it belongs to quite another subject. It was brought into use in Great Britain, where they have a king vested with hereditary power. Here, say they, it is dangerous to place the power of the sword and the purse in the hands of one man, who claims an authority independent of the people; therefore we will have a Parliament. But the king and Parliament together, the supreme power of the nation,—they have the sword and the purse. And they must have both; else how could the country be defended? For the sword without the purse is of no effect; it is a sword in the scabbard. But does it follow, because it is dangerous to give the power of the sword and purse to an hereditary prince, who is independent of the people, that therefore it is dangerous to give it to the Parliament—to Congress, which is your Parliament—to men appointed by yourselves, and dependent upon yourselves? This argument amounts to this: you must cut a man in two in the middle, to prevent his hurting himself.

But, says the honorable objector, if Congress levies money, they must legislate. I admit it. Two legislative powers, says he, cannot legislate in the same place. I ask, Why can they not? It is not enough to say they cannot. I wish for some reason. I grant that both cannot legislate upon the same object at the same time, and carry into effect laws which are contrary to each other. But the constitution excludes every thing of this kind. Each legislature has its province; their limits may be distinguished. If they will run foul of each other; if they will be trying who has the hardest head, it cannot be helped. The road is broad enough; but if two men will jostle each other, the fault is not in the road. Two several legislatures have in fact existed and acted at the same time in the same territory. It is in vain to say they cannot exist, when they actually have done it. In the time of the war, we had an army. Who made the laws for the army? By whose authority were offenders tried and executed? Congress. By their authority a man was taken, tried, condemned, and hanged, in this very city. He belonged to the army; he was a proper subject of military law; he deserted to the enemy, he deserved his fate.

Wherever the army was, in whatever State, there Congress had complete legislative, judicial, and executive powers. This very spot where we now are, is a city. It has complete legislative, judicial, and executive powers; it is a complete State in miniature. Yet it breeds no confusion, it makes no schism. The city has not eaten up the State, nor the State the city. But if there be a new city, if it have not had time to unfold its principles; I will instance the city of New York, which is and long has been, an important part of the State; it has been found beneficial; its powers and privileges have not clashed with the State. The city of London contains three or four times as many inhabitants as the whole State of Connecticut. It has extensive powers of government, and yet it makes no interference with the general government of the kingdom. This constitution defines the extent of the powers of the general government. If the general legislature should at any time overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the constitution does not authorize, it is void, and the judicial power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void. On the other hand, if the States go beyond their limits, if they make a law which is a usurpation upon the general government, the law is void, and upright, independent judges will declare it to be so. Still, however, if the United States and the individual States will quarrel, if they want to fight, they may do it, and no frame of government can possibly prevent it. It is sufficient for this constitution, that, so far from laying them under a necessity of contending, it provided every reasonable check against it. But perhaps, at some time or other, there will be a contest; the States may rise against the general government. If this do take place, if all the States combine, if all oppose, the whole will not eat up the members, but the measure which is opposed to the sense of the people will prove abortive. In republics, it is a fundamental principle that the majority govern, and that the minority comply with the general voice. How contrary, then, to republican principles, how humiliating, is our present situation! A single State can rise up, and put a veto upon the most important public measures. We have seen this actually take place. A single State has controlled the general voice of the Union; a minority, a very small minority, has governed us. So far is this from being consistent with republican principles, that it is, in effect, the worst species of monarchy.

Hence we see how necessary for the Union is a coercive principle. No man pretends the contrary: we all see and feel this necessity. The only question is, Shall it be a coercion of law, or a coercion of arms? There is no other possible alternative. Where will those who oppose a coercion of law come out? Where

will they end? A necessary consequence of their principles is a war of the States one against the other. I am for coercion by law—that coercion which acts only upon delinquent individuals. This constitution does not attempt to coerce sovereign bodies, States, in their political capacity. No coercion is applicable to such bodies, but that of an armed force. If we should attempt to execute the laws of the Union by sending an armed force against a delinquent State, it would involve the good and bad, the innocent and guilty, in the same calamity.

But this legal coercion singles out the guilty individual and punishes him for breaking the

laws of the Union. All men will see the reasonableness of this; they will acquiesce, and say, Let the guilty suffer.

How have the morals of the people been depraved for the want of an efficient government, which might establish justice and righteousness. For the want of this, iniquity has come in upon us like an overflowing flood. If we wish to prevent this alarming evil, if we wish to protect the good citizen in his right, we must lift up the standard of justice; we must establish a national government, to be enforced by the equal decisions of law, and the peaceable arm of the magistrate.

## CHRISTOPHER GORE.

THE eminent subject of this sketch was born in Boston, Massachusetts, on the twenty-fifth of September, 1758. His father was a worthy and respectable mechanic, who by a course of honest and skilful industry acquired a large property. He married Frances Pinckney, by whom he had fourteen children. On the commencement of the difficulties between the colonies and the mother country, he embraced the cause of the Crown: was an Addresser of General Gage, went to Halifax on the evacuation of Boston, in the spring of 1776, and from thence to England. After the war he returned to Boston, where he died in the year 1795.

Christopher was the youngest of three sons. He received his early instruction at the public schools in Boston, and fitted for college in the Latin school, under the guidance of the celebrated Master Lovell, whose name is honorably associated with the early days of many of the best scholars, and some of the most celebrated men of New England. He entered Harvard College, at the age of thirteen years, and was among the youngest of his class; but young as he was, his talents were of that high order, his tastes for literary pursuits so decided, and his application so judicious, that he soon acquired and sustained the reputation of a good scholar. During his junior year the war of the revolution commenced, and the college buildings being wanted for the use of the American army, the students were dispersed. On returning to his home, his father expressed a desire that he should retire from college altogether and enter upon the study of medicine. Unwilling to gratify the desire of his father, "as he had no taste for that profession," he resolved if possible to complete his collegiate course, and for that purpose went to Bradford, in his native State, and studied under the direction of the Rev. Mr. Williams. On the removal of Harvard College to Concord, Massachusetts, Mr. Gore, with many of the students, attended there and continued his studies; graduating in 1776, with honor and with a character, that gave promise of future eminence and usefulness.

At college, he was uncommonly popular. "His manners were engaging," says his biographer, "his disposition was ingenuous, and his conduct fair and honorable. It is saying much for the integrity of his principles, that he passed the dangerous period of a college life, pure and unstained by vice. Nothing mean, disgraceful or degrading was ever attached to his youth." It was this amiable character, joined to his social disposition and literary taste, that led him to form friendships, which in after years continued to increase in strength and brightness, and to yield purer satisfaction, to the close of life.

Mr. Gore left college about the time the independence of the colonies was declared, and like many others who were destined for the peaceful pursuits of professional life, was animated with the ardent spirit of patriotism, and for a short season joined himself with a number, who cheerfully prepared to endure the hardships and privations of military service, to repel an expected invasion of the British on Rhode Island. The invasion did not take place, however, and his services were not required.

Soon after this period he became a student at law, under the guidance of Judge Lowell, and continued with him, as a member of his family, until he commenced practice. This situation afforded him great moral and intellectual advantages; and the character he subsequently bore



evinced how able he was to appreciate and improve them. When he entered on the practice of his profession, he brought to it not only a mind prepared by a judicious course of study, but the enviable recommendation of an uncorrupted youth.

He rose rapidly in public esteem. His strict attention to business, his faithful application of time and talent, his punctuality in the discharge of the trusts confided to him, his powers of eloquence, and his ease of manners, soon secured him, at an early age, not only patronage, but an eminence in his profession. His fellow-citizens manifested the regard in which they held him, and the confidence they had in his abilities, by delegating him, before he had reached the age of thirty years, to the Massachusetts Convention, for the consideration of the Federal Constitution. In that assembly, associated with those long-tried and ardent patriots, Samuel Adams and John Hancock, he bore an active and honorable part.

In the year 1789, he was appointed by Washington, the first United States Attorney of the District of Massachusetts, under the new constitution, and in April, 1796, was associated with William Pinckney of Maryland and Colonel Trumbull of Connecticut, in a commission to settle the claims for British spoiliations, under the fourth article of Jay's treaty. He remained in England eight years in this employment, visiting his home once during that time, on business of a private nature. His unsullied public character, the polished courtesy of his manner, and his high literary attainments, secured him the friendship and regard of all who became known to him, among whom were many of the most distinguished men in Great Britain. At the same time, by his assiduous attention to business, his profound knowledge of commercial law, his labored arguments, and his personal influence, he recovered sums to a vast amount for the citizens of his native country. Mr. Gore's and Mr. Pinckney's great exertions during this commission, are well known, but it is not so generally understood, that to Mr. Gore one large description of sufferers were principally indebted for the recovery of their claims. Mr. Pinckney had great doubts as to that class of captures, which were made under the rule of 1756. Mr. Gore made a very elaborate and powerful argument in favor of those claims, and by his perseverance and exertions, a great interest was secured to the people of the United States.

When Rufus King, who had been minister to the British Court, returned to America, he appointed Mr. Gore chargé d'affaires. In this station he continued until the following year. On his return from England, "so acceptable had been the performance of his duties," says Sullivan, "that the most respectable persons united in a festival to do him honor: and a more sincere and cordial testimonial of respect and esteem was never given to any man."

Soon after his return, Mr. Gore resumed the practice of his profession. He was a member of the Massachusetts Senate, for the county of Suffolk, during 1806 and 1807, and in the year following, was chosen to the lower house of the State Legislature. His position in this body was conspicuous, upright, and honorable. One of the ablest papers that appeared, on the orders in council, and the decrees of France, and on the manner in which these had been treated by the national government, was drawn up by him, in the form of a report, on a memorial of the citizens to the legislature. In 1809 he was chosen governor of Massachusetts, and continued in office one year. As chief magistrate, he made himself familiar with every subject, that related to the interests and prosperity of the State, the honor and happiness of the people. At the expiration of his term of office, he returned to private life, to remain but a short time however, as, in 1814, he was appointed by Governor Strong, to the Senate of the United States. In that assembly he displayed his usual ability and zeal, and exerted a great personal influence among all parties. After a service of three years in this station, the duties of which were becoming too arduous for his health, he resigned his seat, and did not thereafter enter public life.

Mr. Gore was an active and influential member of many of the literary and benevolent institutions in the community in which he lived. He was among the earliest members of the American Academy, and from 1806 to 1818, occupied the presidency of the Massachusetts Historical Society, one of the most respectable and useful bodies in America. To these institutions he bequeathed valuable legacies; as he did, also, to Harvard College—making the corporation of that institution his residuary legatee.

Mr. Gore's personal appearance is thus described by one of his cotemporaries: "He was

rather tall, and, in middle life, of full person and erect, but began to bend forward at an earlier age than common. He was bald on the whole upper surface of his head, at an unusually early period. His hair was tied behind, and dressed with powder. His face was round and florid, his eyes black; his manners courteous and amiable. His eloquence was dignified and impressive, and in all his relations and deportment, he had the bearing and polish of a well-bred gentleman.\* During the last years of his life, he suffered intensely from bodily infirmities; yet "such was his fortitude, such the equanimity of his mind, sustained by reflection, philosophy, and religion, that to a stranger he seemed not to suffer. His noble person literally bent down with pain and disease, he received his friends with cheerfulness, and so exerted himself to entertain them, that they left him with increased admiration of his intellectual and moral worth." On the first of March, 1829, having endured his sufferings like a martyr, without a murmur of complaint, he yielded to the violence of his disease, and cheerfully surrendered his spirit into the hands of his Maker.†

#### PROHIBITION OF CERTAIN IMPORTS.

On the twenty-seventh of January, 1814, the Senate of the United States, in Committee of the Whole, resumed the consideration of the bill "to prohibit the importation of certain articles therein described," when Mr. Gore, moving to strike out from section first, the words "any article manufactured or composed of wool, or of which wool is the material of chief value; any article manufactured or composed of cotton, or of which cotton is the article of chief value, except nankeens from beyond the Cape of Good Hope;" addressed the chair as follows: ‡

MR. PRESIDENT: I have listened, sir, with undivided attention, to learn if there were any substantial reasons for the passage of this bill. I can perceive none that are even specious. We may be confident, from the known industry, ingenuity, and information of the honorable chairman of the committee, who introduced the subject, that if any such existed, he would have produced them. Indeed, sir, the gentleman considers the proposed measure as a mere supplement to another, viz: the non-importation law; the policy of which is not to be brought into question at the present time, and on the present occasion.

Should that law be deemed improper, the only mode in which he thinks its wisdom and policy can be discussed, will be to offer a motion for its repeal. It is not clear to my mind, how the propriety of this bill can be decided,

which is a mere accident, without considering the merits of the principal measure to which it is to be attached, and which it is intended to enforce. If the act which this is to execute, was originally wrong, or has become so now, although at first proper, we ought at least to refrain from doing any thing which may give it strength. This is yet in our power. To repeal the law does not depend on this House; the other branch of the legislature may refuse its concurrence: should that body concur, the President may decline to afford his approbation; and considering how dear this system is to him, we have a moral certainty he would not. I am, therefore, not satisfied to follow the advice of the honorable chairman, by obeying the rules which he has prescribed to himself, and which seem to have induced him to rest the bill principally, if not altogether, on the message of the President. He too, sir, has omitted to offer any grounds for the opinion he has been pleased to advance. The recommendation of the President is undoubtedly entitled to the most respectful attention, but we have no right by our votes to sanction error, from whatever source it may come. We ought to refrain from acting, until our minds are convinced of the propriety of the measure recommended. We have already sir, without any evidence of the assumed fact on which it was recommended—contrary to the conviction of a majority of this House I cannot say, but I may say, contrary to the avowed conviction of some who voted for the measure—passed a bill, in obedience to the will of the Chief Magistrate, which subjects all our citizens to immense loss and privation; which dooms large and populous districts of our country to want and wretchedness; which pronounces to the world, that the citizens of the United States cannot be trusted out of the immediate eye of the government; that reduces the country to a desert, and then converts it into a prison for its miserable

\* Sullivan's Familiar Letters on Public Characters. Edition of 1847, page 382.

† Memoir of Mr. Gore, published in the Collections of the Massachusetts Historical Society; the sketch of his life in the American Annual Register; Sabine's American Loyals, and Sullivan's Letters.

‡ Annals of Congress, January 27th, 1814.

inhabitants, under all the regulations of military discipline.

Enough, sir, has been done, I hope, to satisfy the President, and the world at large, of his weight and influence in this honorable and independent branch of the legislature. Let us, then, on the present occasion, examine this message, at least those parts of it which relate to the subject before us, with all the deference which is due to the President, and with all the freedom which is required by our paramount duty to the public.

The message declares, that "the tendency of our commercial and navigation laws, in their present state, to favor the enemy, and thereby prolong the war, is more and more developed by experience. Abuses of a like tendency take place in our important trade; British fabrics and products find their way into our ports, under the name and from the ports of other countries."

"To shorten as much as possible the duration of the war, it is indispensable that the enemy should feel all the pressure that can be given by it. The restraints will affect those most who are most ready to sacrifice the interest of their country in pursuit of their own."

The evil complained of is the tendency of our navigation and commercial laws, by allowing the importation of articles of a kind like to those manufactured in England, to introduce British fabrics and products, to favor the enemy and prolong the war.

The remedy proposed, is the express and absolute prohibition of all such articles, from whatever country they may come. The object is to cause such a pressure on the foe as to shorten the war; that is, to compel him to accede to our terms. It cannot be forgotten, that our commercial and navigation laws prohibit, under heavy penalties, the introduction of all articles of the growth, produce, or manufacture of Great Britain; that our criminal laws are very severe on those who obtain such articles by trading with the enemy. With all these laws against offenders, and penalties imposed on all concerned in the importation of British goods, it is difficult to conceive that any amount of the prohibited articles can be imported, at most to such a degree as to afford to Great Britain any essential means to carry on the war. It is more difficult to conceive what tendency such laws have to bring into our ports British fabrics and products.

The President has been pleased to say, that experience more and more develops these facts and consequences. Let us then, sir, appeal to experience, to ascertain the pressure that is likely to be made by the prohibition proposed and its effects on the enemy. In our revolutionary contest we endeavored, by refusing to import her manufacture, to oblige Great Britain to listen to our just complaints. We were aided by the great body of her merchants and manufacturers, trading to this country, by some of the most opulent of her corporations, and by

the talents and eloquence of her most distinguished and influential statesmen. All these were without effect; she disregarded the pressure and was inexorable to our complaints.

The war ensued, and laws against the importation of all goods, the growth, produce, and manufacture of Great Britain, were enacted. No one will doubt those laws were as faithfully executed then as now. The pressure, whatever it was, had not the smallest effect. She swerved not from her purpose, until all Europe engaged in the war against her; until we had captured two of her largest and best appointed armies, under the command of her most renowned and illustrious Generals, nor until an hostile fleet swept the British Channel, and braved her navy in her own ports. In the spring of 1806 we again uplifted this weapon, so terrible in our eyes, so harmless in hers; we passed a law prohibiting the importation of certain articles, of the manufacture of Great Britain, but the blow was suspended for seven months; at the end of this time, eight months more of grace were allowed to the alleged offenders against our rights, with a power to the President to extend the time six months longer, in which she might redeem our favor. No effect was produced. Shortly after the lapse of this term, a general embargo was imposed. In March, 1809, when President Jefferson and his very obsequious Congress, who, at his mere suggestion, passed that abominable act, and its arbitrary and unconstitutional supplements, were obliged to capitulate with public opinion, and repeal their odious laws, a non-intercourse was established against France and England, and conditions held out to these great powers, a compliance with which should relieve them from this dreadful pressure. On application to one of them to accept our good will and custom, and aid, in extricating us from the effects of our own folly, we were tauntingly told that Great Britain had no interest in the repeal of our laws, nor in relieving us from the awkward predicament in which we had been pleased to place ourselves. By the other, our ships were burned, our property plundered, our national character, our government, and people insulted and reviled in the grossest manner, and in the face of the world. All this was borne with a patience that was never surpassed by the meanest of vassal nations and unequalled by any that ever made the smallest pretensions to independence. In this exercise of our restrictive energies, according to the strange language of the day, we reaped nothing but misfortune and disgrace. At length, smarting under the failure of our abortive schemes, and stung with the mortifying conviction that the world saw and ridiculed our extreme weakness, in attempting such mighty ends by such feeble means, we rushed unprovided and unprepared, into a war of arms, with a nation amply provided and well prepared to contend with all the Powers of the earth. Thus much for our experience of the pressure, and the effects thereof

on Great Britain, by prohibiting the importation of her manufactures.

We can draw still deeper on experience, to test the soundness or futility of such measures, if we will revert to the efforts of the potent Emperor of France on Great Britain. To aid his numerous armies in the conquest of those proud islanders, he prohibited the use of her manufactures, not only in his own dominions, and in those of his vassal states, but throughout all Europe; and for many years he succeeded in causing this prohibition to be general over the Continent. No foothold could Great Britain obtain on which to empty her overloaded stores and magazines, but some distant island or some obscure port in the North Sea. She was shut out from the market of more than an hundred millions of people by this seemingly all-powerful monarch; undismayed she met the world in arms, bore every privation for the loss of open markets, for the labor of her people, and the products of her vast possessions, without discovering the smallest symptoms of yielding an iota of her pretensions. Her proud and unbending neck spurned the yoke. It bent not the least, although we too added our mite to the pressure. She never hesitated between the alternative of no trade, or a surrender of what she deemed her rights. The effects of her firmness and perseverance are not likely to render her more submissive to the blows we have inflicted, or to those we are preparing for her by this bill. She now has all the world courting her trade, and receiving her products, diminished France, impoverished America excepted.

When she considers how successfully she met her numerous foes, armed also with prohibition and proscriptions of her products on every foot of land, from the Baltic to the Mediterranean, and compares the situation of her then enemies with that of our fallen country, will she be frightened into submission by the increased pressure of this act? She attempts to capture our ships, to destroy our trade, and prevent us from receiving supplies from abroad. We co-operate most manfully in this work of ruin; nay, we do more to this end, in a few short days, than she could do in many years. We annihilate our ships, destroy our produce, imprison all our citizens, suffer not one to escape from the United States, doom whole States to sloth and famine, allow no man, woman, or child to cross a river or bay without permission from the President, to obtain the smallest comfort in the greatest need, break down all the barriers heretofore thought necessary to the support of the public and individual liberty, disregard the provisions of our constitution, and subject ourselves and property to martial law. When our vindictive foe has obtained so efficient an ally, in bringing destruction on the people of this country, he may cheerfully sustain the loss which will be incurred by retaining at home, or selling at a reduced price, the few blankets that might be smuggled into the

United States by some crafty foreigner from a neutral port.

The remedy proposed for this enormous evil, as it is believed, the practice of which is supposed to afford to Great Britain the power of continuing the war against us, is an express and absolute prohibition of articles of a kind like to those of British fabrics, from all countries. The existing laws render liable to forfeiture all British goods, and three times their value, or the vessel or carriage which shall convey them. These laws, moreover, render the master of the vessel, and all parties to the offence, liable to heavy and severe penalties, and superadd to those inflicted by public law, and by the common law of the land, other and more aggravated penalties.

If the people of the United States be as profligate, as the message referred to supposes them, and do now risk all the fines and forfeitures, pains and penalties, to which they are liable, will such an act as the one proposed, effectually secure the entire exclusion of such goods?

The Emperor of France, I will not say more despotic in the quality of his laws than the government of the United States, but possessing greater power, exerted all the ingenuity of his inquisitive policy, and employed his vast means, to detect offences against his prohibitory statutes, and, when detected, punished them with unmitigated severity. Yet the prohibited goods were to be found in every part of the Continent, and in the very heart of his dominions. Surely such a lesson will not be lost on any legislature, guided by a sound discretion, nor on any man not predetermined to shut his eyes against the light of experience.

It is not merely the experience of the present day to which I would ask the attention of gentlemen. The experience of all times, and of all nations, has shown that the most arbitrary, even the most sanguinary provisions of the best executed laws are ineffectual against the introduction of foreign commodities, which are better and cheaper than the domestic. It has been truly said, the strongest, the highest bars that the tyranny or folly of government can erect, always have, and we may therefore safely predict always will, prove powerless against the cheapness of foreign articles. Private interest will either overleap or burst them asunder. Laws against the long-continued habits, and the manifest benefit of a people, serve but to corrupt their morals, to compromise the character of government, to expose its weakness, and finally to render it both odious and contemptible.

To render the miserable system, of which this bill is to be the keystone, more palatable, we are told encouragement will hereby be afforded to our own manufactures. This comes with an ill grace, indeed, from that government which has most unfeelingly destroyed all the numerous manufactures that spring from, and are supported by, navigation and commerce. Manufactures that inspire health, courage, firm

ness, and intrepidity, that nerve the arm and invigorate the mind, that provide you men, at all times, able and willing to defend the soil blessed by their industry, and to advance the glory of a nation that has the wisdom to protect and cherish them.

Instead of these hardy employments, you offer the loom and shuttle. You huddle together men, women, and children, in one contaminated, and contaminating mass, and will soon render your men more effeminate than your women. You have sentenced the sons of industry and enterprise to penury and want, and expect to stifle their complaints by sending them to work at a machine, where an idiot can work as skilfully as themselves, and a feeble girl of ten years of age can earn as much.

I know, sir, the people of this country are patient beyond all example. They have believed the government was not hostile to their interests. They have been taught to think the privation they endured was a necessary price for the protection of their rights, and the support of their freedom. This opiate, which has been so plentifully administered, must, and will lose its effect. They cannot continue the dupes of that policy, of which they are so manifestly the victims. They will not stoop to beg; they cannot see their wives and children perish with hunger and nakedness. You take from them their livelihood, and restrain them from the sad privilege of seeking abroad that bread which you will not permit them to earn at home. They will feel themselves degraded and insulted by being told, that they must fight the enemy for their rights, when the government, which ought to be their friend and protector, deprives them of all their rights, of even the means of obtaining subsistence, and at the same time renders them the scoff and ridicule of the world.

Would to heaven, sir, the government might awake from its own fatal illusions, before it be too late,—before the people shall awake to the deformity of that despotism which debases and oppresses them!

The President tells you the restraints will affect those most who are most ready to sacrifice the interests of their country in pursuit of their own. These restraints will affect all who use any articles like those which are prohibited. The bill grants a monopoly to the manufacturer, at the expense of every one who wears the article which he makes. You tax the weaver the difference that is occasioned in price, by want of those commodities, which would have been imported had not your prohibition been imposed.

By the destruction of commerce, with its dependent arts, and the flattering bounties you thereby heap on the favored manufacturers, you prematurely seduce the capitalists of the country into new and untried employments. When peace returns, and trade shall be restored, should that ever be the case, these manufactures will not compete with foreign. They

will then be destroyed with the same apathy that is now discovered in the destruction of others that are more useful. From the high price of labor in America,—the cheapness, quantity, and excellence of our lands, and the profitable employment of capital in foreign commerce,—we cannot expect to manufacture many articles so cheap as they can be afforded from other countries, less fortunately situated. Such will then be imported, and the numerous adventurers in these new establishments must fail. Sad, but certain result of not leaving to the sagacity of individuals, at all times more quick-sighted and intelligent on subjects of this sort than the wisest governments, the employment of their wealth, and the exercise of their own industry.

All writers, sir, on political economy, all nations, except our own; all statesmen, except those who rule the destinies of the United States; are satisfied of the vast importance of commerce to the population, the riches, and prosperity of a country; that, with it, are inseparably connected individual wealth and national power, of which it is essentially the source and support.

From some cause, which I will not now undertake to develop, but which is, at last, pretty well understood throughout this country, the efforts of our government have all tended directly to the destruction of commerce. To this end it has been loaded with all the shackles and restrictions for which any pretence could be invented, and to as high a degree, and as long as the patience of the people would bear. Congress has now finally suppressed all that can be exercised by our own citizens, both foreign and domestic.

The little remnant which had been spared from prohibitions, proscriptions, embargoes, and war measures against Great Britain, at the evident hazard of offending the few friends which remain to us in the civilized world, is now to be sacrificed to this exterminating spirit. Not an article, of which wool or cotton is an ingredient, is to be admitted from abroad. By far the greatest portion of the apparel of the whole population of this country, is composed of wool or cotton. It cannot be pretended that one-half the supply necessary to cover our citizens from absolute nakedness, can be made at home. Without recurring to the uncertain accounts, of who makes, and where these goods are made, and the quantities that interested manufacturers pretend can be delivered, there is one fact known to every one, that puts this question beyond all doubt: notwithstanding the immense influx of those articles in the autumn of 1812, and the quantities which we are told find their way into the United States from Great Britain, as well as from other parts of the world, goods of this kind, especially of the coarser sort, and such as are used almost exclusively by the poor, have been sold for a year past at three times the amount of their original cost, whereas, in com-

mon and ordinary times, forty, or at most fifty per cent. advance, on the first price, was considered sufficient to pay all charges, and afford a handsome profit to the importer.

If the bill passes, and effects the exclusion which is expected, the rich must, and will pay the monopoly price of the manufacturer. The poor must suffer extreme distress. Formerly, the number of this class was small, and it has become very large, and soon will embrace a majority of our citizens. On them will fall these restraints. Wherein have they been willing to sacrifice the interests of the country in pursuit of their own? Their poverty is their only crime, and this cannot be charged on them. It flows directly and palpably from the government. They have been generally, both in faith and practice, devoted to the administration.

Well may they exclaim, What have we done to merit from your hands both nakedness and hunger? All this is to be inflicted and suffered under the notion, that, by such pitiful schemes, you can compel the most opulent, the most powerful, the most prosperous, and the proudest nation on the earth, to receive the law at your hands, and to accept peace on your own terms. I forbear to press this subject further. I am persuaded, sir, and I trust this House, if it will exercise its own judgment, will also be persuaded that this bill, if passed into a law, can have no other effect than to render the nation ridiculous, and to increase the misery and distress of a loyal and faithful people, already bowed to the earth with privations and sufferings. There is one other consideration in the minds of many, of greater magnitude than any yet contemplated, against employing our time and strength in such fruitless schemes, which will now—they always have done—prove a mere *ignis-fatuus*, as relates to the enemy. They delude us from examining into the critical state of our national affairs, and from adopting measures suited to the extreme exigency of our condition.

It is time to cease this trifling, and to look fully at the dangers of our present, and prepare for the horrors of our future situation. On our southern frontiers, we have an invading foe, and no force, that we know of, to prevent desolation and ruin, as far as he chooses to proceed. In the west, it is true we hear the voice of joy and gladness, arising from the great influx of wealth, from projects for new demarcation of boundaries, extended territories, increasing population, and unclouded prosperity. I really rejoice, sir, that any part of our soil is free from the general gloom, from the otherwise universal despair that pervades the country. I need not say it is only in that highly favored portion of the United States, where the occasion or the sound of gladness is to be heard.

On our seaboard, we are closely invested by the enemy's fleet, from the St. Croix to the Mississippi, menacing destruction and devastat-

tion, should our government execute their declared purpose. On all that extent of coast, from Louisiana to Maine, we have scarcely a fortress to protect us against this menace, should we proceed the unhallowed length that has been threatened. And we have the most fatal evidence, that our enemy is neither slow nor measured in his retaliations. On our northern frontier, late a scene of the most extravagant vaunting, and whence we expected to realize all the promised fruits of the war, we behold our towns altogether defenceless, and at the mercy of an exasperated foe, the country laid waste and desolate, villages sacked and burning, and their wretched inhabitants naked and forlorn, fleeing in the most inclement season, from the flames of their houses, and the tomahawk of the savage.

All this time, the government of the nation amuses itself, by weighing the degree of pressure it can make on a powerful enemy, by depriving her woollen drapers and cotton weavers of the sale of a few bales of goods. Never was such a scene exhibited, since the day when the master of a great empire thought to divert himself by the most frivolous amusement while his capital was in flames. Let us quit this disgraceful and humiliating game, and seriously betake ourselves to the protection of our defenceless and neglected inhabitants, restore to them their ancient rights, suffer them to return to cheering industry and honest enterprise, endeavor to bring back peace, prosperity, and, if possible, character, to our bleeding country—once the just pride of every American, and the envy of every nation, now so fallen, so dishonored, so disgraced, and degraded, as to be unworthy the consideration of the meanest.

The system, sir, of which this is a part, has been tried in youth, and in manhood, in peace, and in war. In no instance has it ever pressed on Great Britain so as to produce from her a more favorable attention to our complaints. To us it has been pregnant with misfortune and disgrace. When practised by the most populous and most wealthy nations of the earth, it has also been ineffectual. Great Britain has risen triumphant over all the efforts of her numerous foes, and has now as friends, almost all those who were her enemies, and nearly the whole world is open to her as a market. It would seem then, conclusive to any men, not bereft of reason, that to persist in this course of measures, as instruments of war, marks the grossest imbecility of mind and power. We have also seen that the most powerful nations have never been able to execute such a system. The bill before us, and the message\* which produced it, confess that we have not executed it; we have tried all the civil and military force of the country—all the forfeiture and penalties that human ingenuity and uncontrolled power could invent and enact, without effect. It must,

\* See Secret Message of President Madison to the Congress, in the Annals of Congress, 1813-1814, page 549.

therefore, be worse than idle to persist, especially by such feeble means.

I did not, sir, in my motion for striking out, include spirits distilled from the sugar cane, because I am satisfied we can make at home, spirits in as great quantities as can be useful for domestic consumption. The only remaining consideration would be that of revenue. And since, by all the skill of our financiers, and the wisdom of our statesmen, we have only reduced

the annual amount of cash receivable in duties, from sixteen millions to a half a million of dollars, it cannot, in the view of the administration, be important to regard the article in this relation; moreover, the prohibition of spirits distilled from cane, and the admission of French brandy, discover a due respect to that power and those interests, with which our own seem intimately, if not inseparably and fatally involved.

### SPEECH ON DIRECT TAXATION.

The following remarks, on the bill "to provide additional revenue for defraying the expenses of government, and maintaining the public credit, by laying a direct tax upon the United States, and to provide for assessing and collecting the same," were delivered by Mr. Gore, in the United States Senate, on the fifth of January, 1815.

MR. PRESIDENT: This bill imposes burdens extremely heavy on all the citizens of our common country, and on those with which I am most acquainted, a load that, under existing circumstances, will be intolerable.

With the principle of the bill, in selecting as objects of taxation the lands and buildings of the United States, I have no fault to find.

I consider them as fit and proper subjects of revenue, and such assessments calculated to equalize the burdens of the country, as imposing them on all parts, and with more impartiality than can be attained by any other mode. And, sir, I should feel it my duty to vote for a bill imposing such a tax to any reasonable amount had it not pleased the government of the nation to place the State, which I have the honor to represent, out of the protection of the United States, and to determine, that while it shall bear a full proportion of the taxes, none of their fruits shall redound to her relief.

The motives of Congress in granting supplies, are doubtless to provide for the defence of the country, and the security of its rights, by a safe and honorable peace.

These motives are wise and irresistible; all concur in the necessity of defending our territory against the enemy; and in the assertion and maintenance of our essential rights at every peril, and if necessary, by the sacrifice of all that conduces to private ease and personal enjoyment.

No one feels this truth more sensibly than myself—no one considers the duty more imperative. With its obligations I have no compromises to make, and in its performance I ask for no limitations on account of the folly and improvidence with which the war was urged,

nor of the degrading imbecility, and prodigal waste of treasure, of blood, and character, by which it has been prosecuted.

The enemy publicly proclaims his purpose to spread desolation far and wide, on our unprotected sea-coasts. He proceeds to execute his threats with a barbarity and baseness, in many instances, unprecedented.

The mansions of the rich, the palaces of the nation, and the cottages of the poorest citizen, feel alike his disgraceful vengeance. The opulence of the wealthy is destroyed; the means of subsistence to the impoverished inhabitants of the sands are redeemed from his rapacity by grinding impositions, which the charity of such as being out of the reach of his power are alone able to supply. Even the ashes of the dead are not suffered to repose in quiet. And, as the last act of atrocity, your slaves are seized and seduced, embodied in military array, and led to the destruction of their masters, and the plunder of their possessions.

Whether those acts seek an apology in the conduct of our own government, we cannot inquire for the purpose of weighing our duty to repel his attack. Whoever comes to our shores in the character of an enemy must be resisted. We must do all in our power to defend ourselves and our soil from an invading foe.

A question arises, Have we any grounds for believing that the grants of men and money will be wisely applied to the purposes of defence and protection?

Honorable gentlemen will please go back to November, 1811, when the Executive, in winding its devious course to the fatal act of June, 1812, addressed the hopes, the fears, the vanity, and pride of the people, and owning its duty to establish the general security, assured the nation, "that the works of defence on our maritime frontier had been prosecuted with an activity leaving little to be added for the completion of the most important ones. The land forces so disposed as to ensure appropriate and important services, and embodied and marched toward the north-western frontiers," to seek satisfaction for acts, which it was declared, had alike, "the character and effects of war."

The subsequent course of things must be full

in the mind of every one, and the result known and felt by all.

We learn that the same measures are to be pursued. The Atlantic coast is to be defended, as heretofore, by attempts on Canada. This is frankly and formally told to the Congress, that no pretence can be urged in future, of disappointment or deception.

I forbear to speak on this subject. In the actual state of things, all reasoning must be futile. The powers of language cease before the eloquent monitors constantly in our view.

We are doomed to remain in this scene, that we may not for a moment lose sight of our degradation and disgrace. The government had complete information of the designs of the enemy months before his attack on Washington. In this city were all the means of defence, fortresses, ships, cannon, men, and money; here, too, was concentrated all the wisdom of the administration, to deliberate, examine, decide, and prepare for the support of the Capitol, at least sixty days prior to its destruction, by a few thousand worn down and exhausted soldiers. You have now in full view the effect of their combined councils—of their individual and united talents, prudence, and energies.

These monuments show, in characters not to be mistaken, the future in the past, and the desolation around. They declare the fate of every place under the influence and protection of our government, if approached by the enemy.

Congress continues to grant, with no sparing hand, supplies of every kind to the same men, in the hope, it is imagined that heaven may, by some miracle, interpose for their application to the safety and relief of the country.

Permit me, sir, to crave your indulgence, and that of the honorable Senate, while I relate the condition of the country which I represent, as the grounds of the vote I am constrained to give on this occasion. The State of Massachusetts has a sea-coast of about six hundred miles in extent. Its eastern boundary joins that of the enemy. It is of course peculiarly liable to invasion. The President of the United States was avowedly of the opinion that it would be invaded immediately on the commencement of the war. There were several islands, and one of great importance, on the eastern frontier, the title to which was not definitively acknowledged by Great Britain. The claim of Massachusetts had been allowed by this power in a treaty made according to the instructions of the President, which treaty the United States had chosen to reject. The government, therefore, superadded to the general obligation enjoined upon it, to protect and defend the territory of all the States, had incurred a peculiar responsibility to guard this particular frontier from falling into the hands of the enemy.

This State has been left entirely unprotected and defenceless, and has at no time had within it, and destined to its defence, sufficient force of the United States to protect any one point

against a common and ordinary hostile attack.

Shortly after the adoption of the constitution she ceded to the United States all the fortresses in her possession. These, with all the prominent points of lands and sites, appropriate for fortifications, to defend the State against invasion, were, and for a long time previous to the war had been, in the exclusive possession of the United States. The State, therefore, had no authority or jurisdiction over, nor even to enter them for any purpose; much less to assume the defence of their territory, through these means.

One great and principal object of the constitution was to provide by this government for the common defence, and, by the power and resources of all the States, to protect each against invasion.

The preamble declares: "We the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution." For this end the States surrendered the principal sources of revenue, over which they previously had uncontrolled dominion.

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defence, to borrow money on the credit of the United States."

Here are ample resources, and means commensurate to the duties the United States were enjoined and undertook to perform.

This cannot be denied by the men now in power; for they abolished many taxes, in full and productive operation, at the time they received the government.

Power was also granted to raise and support any kind of force necessary to ensure the common defence, and to protect the State against invasion, viz.: "To raise and support armies. To provide and maintain a navy. To exercise exclusive legislation over all places purchased by the consent of the legislatures of the States in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings."

The several States, having surrendered their own resources, and afforded such ample provision for the common defence, left no doubt of the paramount duty in the United States to perform it punctually and faithfully.

In the present war, they are without excuse, if this be not fully and perfectly done; for the war was of their own choice; they made it, and at their own time.

The several States received from the United States a solemn obligation, that they would protect each against invasion. "The United States guarantee to every State a republican form of government, and shall protect each of them against invasion."



If any thing were wanting to show the sacredness of this duty in the United States, and the absolute reliance which the States entertained of its complete performance, it is to be found in the restrictions and privations which the several States imposed on themselves.

"No State shall grant letters of marque and reprisal. No State shall, without the consent of Congress, lay any imposts, or duties on imports or exports," except, &c. "No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war, in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in a war, unless actually invaded, or in such imminent danger as will not admit of delay."

Having thus surrendered all the pecuniary resources necessary to provide the means of defence, and also the right to raise a force requisite to this end, the several States did rely, and were justified in relying, with perfect confidence, for complete protection and defence, on the Government of the United States.

No one will pretend that such defence has been afforded to all the States in the Union. Massachusetts has been entirely abandoned. The men raised there for the regular army have been marched out of the State.

Within a month of the declaration of war, the governor of that State was informed, by direction of the President, that the regular troops were all ordered from the sea-coast; and his threat, if intended as such, was instantly executed. Thus, the moment the United States had placed the country in a situation to require defence, and which it was their duty to provide, they wantonly took away the only force which could afford it.

It may be said, that the President called forth the militia, in June and July, 1812, for the purpose of making the defence, and protecting the State against invasion, and the governor refused to obey the requisition. On the 12th June, 1812, the President, by his Secretary of War, requested Governor Strong to order into the service of the United States, on the requisition of General Dearborn, such parts of the militia as the general might deem necessary for the defence of the sea-coast; and, on the 22d June, the same general informed the governor that war was declared against Great Britain, and requested forty-one companies for the defence of the ports and harbors in Massachusetts, and the harbor of Newport, in Rhode Island.

The governor of a State is obliged to comply with every requisition of the United States for militia, made in pursuance of the provisions of the constitution. He is equally bound, by his duty to the States, to refrain from calling them forth for purposes not within these provisions.

The only cases which authorize a call for the militia of the several States, to act against an enemy, is to repel invasion.

The President neither by himself nor any of

his officers, ever pretended that this case existed, at the time the requisition was issued. The requisition was made expressly for the defence of the ports and harbors of that State and of Rhode Island.

The militia is a force which belongs to the several States respectively and exclusively, and is so recognized by the Constitution of the United States. The Government of the United States is a government of limited authorities, and has no other powers than what are granted by the constitution. A power to call forth the militia to provide for the common defence, or to protect against invasion, is nowhere granted to the United States in express terms. All the authority over the militia delegated to the United States, is to call them forth to repel invasion; to execute the laws, and to suppress insurrection. The United States are bound to provide for the common defence.

To repel invasion, is included in the duty of providing for the common defence; and as invasion may be sudden, even in time of profound peace, and before the United States can bring their forces to meet an unexpected attack, the militia of the several States is granted to the United States, from the necessity of the case, as the means by which they may provide for the common defence, in such particular instance.

If the United States have authority to call forth the militia for the ordinary purposes of war, for the common defence, or for protection against invasion, under any of the general powers granted, such as that to provide for the common defence, there would have been no necessity for the special clause authorizing Congress to provide for calling them forth to repel invasion; for repelling invasion is undoubtedly one part of the duty of providing for the common defence.

If it were the intent of the constitution to grant to the United States expressly, a power over the militia for protection against invasion, it would have declared, that, for such purposes, the United States might call forth the militia; or it would have said to protect against or repel invasion. And especially in the clause which enjoins on the United States the duty of protecting each State against invasion, the constitution would have declared, and that, for this purpose, the United States shall call forth the militia. No such words, no such grants, are made in this instrument. If, therefore, the authority of the United States to call forth the militia to protect the ports and harbors of a State, be granted, it must be by the terms to repel invasion. Common defence includes all the means by which a nation may be guarded, protected, defended, and secured against danger, both in war and in peace.

To repel invasion, is only one particular and specific act providing for the common defence. It is contrary to common sense, as well as to all the rules of logic, to say that a specific power or duty includes the general power, or

duty, of which it is a part; it is to say that a part contains the whole.

To repel invasion is to drive back and resist that which has already happened. To protect against invasion is to prevent its happening, to secure against its existence. The one act is against an event that has occurred—the other is to ensure and guard against the occurrence of such an event.

To protect against invasion, is to erect fortresses, to have them well manned, and supplied with all requisite stores, to provide and equip ships of war, to have an army and navy well organized and disciplined, in peace and in war. To repel invasion is one specific act of war, against another act of the like character.

To repel invasion is one part of the duty of providing for the common defence, and for this part a particular force is granted. To say that a grant of this force, for this special service, includes a grant of the same force for the purposes of protection and defence, is to say that a grant for one purpose, is a grant for another, and for every purpose, and that the grant of a limited is the grant of a general authority. This would be both illogical and irrational. And if under the limitations, which were intended to control the powers granted to the government of the United States, and especially under the express limitation, viz. "that powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States, or to the people," such construction may be adopted, there remains no security for any right reserved to the States, or to the people.

However conclusive this reasoning may be, it is not to be presumed that, after the strides of power in which the spirit of party has indulged, it will have any effect on those who direct the affairs of this country; I will, sir, however, refer to opinions and authorities in confirmation of what has been advanced, that to many gentlemen did not formally admit either of exception or appeal.

These are to be found in the resolutions and arguments of the legislature of Virginia, and of Mr. Madison, one of that legislature in the years 1799 and 1800. I refer the Senate to the third resolution passed by that body, and framed by the pen of the President, in the words following:

"3. *Resolved*, That this Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government, as resulting from the compact to which the States are parties, submitted by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that contract; and that in case of a deliberate, palpable, and dangerous exercise of other power not granted by the same compacts, the States who are parties thereto have a right and are in duty bound to interpose, for arresting the progress of the evil, and for maintaining within their

respective limits the authorities, rights, and liberties appertaining to them."

"It is said, that Congress are, by the constitution, to protect each State against invasion, and that the means of preventing are included in the power of protection against it."

"The power of war in general having been before granted by the constitution, this clause must either be a mere specification, for greater caution and certainty, of which there are other examples in the constitution, or be the injunction of a duty, superadded to a grant of power. Under either explanation, it cannot enlarge the powers of Congress on the subject. The power and duty to protect each State against an invading enemy would be the same, under the general powers, if this regard to greater caution had been omitted."

"Invasion is an operation of war. To protect against invasion is an exercise of the power of war. A power, therefore, not incident to war, cannot be incident to a particular modification of war. And as the removal of alien friends has appeared to be no incident to a general state of war, it cannot be incident to a partial state, or to a particular modification of war."

"Nor can it ever be granted, that a power to act on a case, when it actually occurs, includes a power over all the means that may tend to prevent the occurrence of the case. Such a latitude of construction would render unavailing every practicable definition of limited powers."\*

If the observations which I have made, are founded on truth, and justified by the constitution, the following positions are established, viz.:

That the United States have no right to call on the several States for militia to perform any act of war, but to repel invasion.

That to defend the ports and harbors of Massachusetts and Rhode Island, the purpose for which the militia was required in 1812, is not within the power delegated by the constitution to provide for calling forth the militia to repel invasion. In the case alluded to in 1812, it was not declared by the President, nor even pretended by his officers, that any invasion was made. In fact, no invasion was attempted until two years after this time. If the United States had no authority to make the requisition, the governor would have betrayed his duty to the State, in complying with the demand.

That the United States had no such authority, I think evident from the examination that has been made of the powers delegated by the constitution. And the State of Massachusetts, instead of being a just object of censure, by the United States, has a well-founded complaint against their government, for an attempt to usurp her rights and invade her prerogative.

\* See proceedings in the House of Delegates of Virginia, on the 7th January, 1800, on the resolutions of the General Assembly of December 21st, 1798.

A question has sometimes been suggested, whether the governor of a State has a right to judge if the requisition be within the provisions of the constitution. A little reflection on the nature of the Government of the United States, and of a State, and of the relation in which the supreme executive of the latter stands to the United States, and to the citizens of his particular State, will show that he is obliged to examine, if the case for which the requisition is made, be within the provisions of the constitution, and if the purposes for which it is declared are manifestly not within the powers delegated by that instrument, to withhold a compliance.

The government of the United States can exercise no powers not granted by the constitution; and so far as this government can support such as it claims on this charter, it is sovereign, and has no other control than its own discretion.

The government of the several States is equally sovereign with respect to every power of an independent State, which it has not delegated by the same instrument to the United States, or which is not thereby prohibited to the several States. It is, also, a sacred duty of the governments of the several States, to preserve unimpaired every right and authority retained by the State, either in its corporate capacity, or for its individual citizens. Whether the militia, the peculiar force of the several States, and that which is to protect and defend every right and power they possess, is called forth by the United States according to the provisions which they made, in delegating to this government its powers, must of necessity be a question between two sovereign independent governments, and on which there is no tribunal authorized to judge between them. And if the governors, who are commanders-in-chief of the militia of the several States, should surrender this force to the United States, in a case not authorized by the constitution, they would betray the trust confided to them by the citizens of their States. They must, therefore, examine the case when called upon, and decide according to their duty as prescribed by the Constitution of the United States, and that of their particular State shall demand.

General Cushing, while superintendent of the military district in which Massachusetts is situated, informed Governor Strong that he expected an order from the President of the United States, to request a detachment of militia for the defence of the sea-coast, and particularly of Boston. That he had not more troops than sufficient to man one of the forts, and proposed that one should be occupied by the militia, and that, while out, they should be subject to the command of no officer of the United States, except the superintendent of the district. The governor acceded to the proposal.

General Dearborn shortly after superseded General Cushing, and on the 8th of July, by order of the President, and in confirmation of the expectation of Brigadier-General Cushing,

requested a detachment of eleven hundred militia to occupy the fort and harbor of Boston.

Governor Strong, although under no constitutional obligation to call forth the militia for the purposes required, yet seeing the forlorn condition of the country, the vast property of the United States in the navy yard, a ship-of-the-line nearly completed, and a frigate all abandoned by the government to the mercy of the enemy—at the same time that these offered to him great temptations to attack and destroy the capital of the State and its environs—and feeling authorized by the resolution of the legislature of Massachusetts, detached the militia, in confidence that the agreement made with General Cushing would be fulfilled.

At the end of their term of service, these men were offered an uncurrent and depreciated paper, as their only compensation.

In the beginning of September, General Dearborn notified the governor that the enemy had taken possession of a considerable part of the State of Massachusetts, and requested a detachment of the militia, for the purpose of protecting and defending such parts of that State, and New Hampshire, as were not in the occupation of the enemy.

Such complaints and objections had arisen in executing the order of July, that the governor, although he issued an order for troops, found himself obliged to place the detachment under the command of a major-general of the militia.

The governor immediately addressed a letter to the Secretary of State, requesting to know from the President if the expenses, thus necessarily incurred for the protection of the State, would be ultimately reimbursed to that State by the United States.

The answer was, that if the force thus put into service by the governor had been required by General Dearborn, or received by him, and put under his command, the expenses attending it would be defrayed by the United States. If otherwise, in either of these particulars, the United States were not chargeable with the expense.

Here is a distinct and plain case, in which the United States had neglected that protection which they were expressly bound to afford the State, and thereby occasioned the loss of a fifth part of its territory;\* and then called upon the State itself to protect the remaining territory. The State obeyed the call, and reserved only that right which the constitution, in express terms, reserved, viz., the appointment of officers to command the militia required; and the United States say this expense must be borne by the State, and that they will not reimburse the amount, because the militia is not placed

\* There were, at the attack and capture of Castine, twenty-eight men and a Lieutenant in the fort. This was all the protection for one of the most important harbors and rivers of the United States, and affording the best situation for a naval depot for Great Britain.

under the command of an officer of the United States.\*

For this act of injustice, for this neglect of duty in the United States towards the State of Massachusetts, for this abandonment of territory to the violence of the enemy, I have never heard the smallest apology.

I forbear to mention the rights of the State, the necessity to which this wanton abandonment by those who ought to protect them may reduce the inhabitants. The laws of self-preservation and of nature, confirmed by that of nations, afford the rule for any member of a confederacy thus deserted and forsaken.

I most earnestly hope, that although cruelly deserted by the government, which contrary to their entreaties brought them into this perilous condition, that citizens of the country may be able to defend themselves. They will do all that men can do under their circumstances. But I am confident, that if this tax be collected there, and paid into the Treasury of the United States, for the exclusive support and defence of others, they will be destitute of the means of making any adequate resistance. I cannot, therefore, vote for this bill.

The present year the Commonwealth has expended more than \$700,000 in her own defence.

\* In the military district, No. 1, which included New Hampshire and Massachusetts, there were less than one thousand three hundred men. These were scattered over an extensive tract of country. In the forts in Boston harbor, there were not two hundred and sixty men, and in the other forts in the State a very small corps, inadequate to any defence. There was, however, a major-general, a brigadier-general, and several colonels. In no one place were there men enough to constitute a colonel's command.

She is now called on by this bill for \$632,041 to defend other parts of the territory of the United States, and her citizens, more exposed than any other, are left to provide for their own defence.

They who calculated on the ability of Massachusetts to pay, from the exactness and punctuality which she has heretofore observed in the discharge of taxes, will recollect, that her faculty to meet the demands of the Treasury, even in times the most prosperous, arose principally from the daring enterprise, unrivalled industry, and rigid economy of the inhabitants that her resources are now annihilated, and she is borne down by obloquy, insult, and oppression.

They who have observed the patience wherewith she has submitted to see the public treasure squandered, to purchase slanders against her citizens, and notwithstanding a complete failure by the full confession of the hireling, that these citizens were so far beyond all temptation as not even to be approached for dishonorable purposes, has been subject to the most degrading insinuations, from the first authority; who have witnessed all the resources of her wealth, all the means of her industry, the object of unabating persecution from the government, and her possessions coldly and expressly abandoned, by the same authority, to the depredations and seizure of the enemy, may conceive that taxes like these will still be paid for the exclusive protection of others; but if gentlemen will only condescend to view the people of this country as their brethren, as freemen, as men, they must come to the conclusion that, had they the means, they could not possibly have the will.

## RED JACKET.

SA-GO-YE-WAT-HA, or *He-keeps-them-awake*,\* “the last of the Senecas,” is said to have been born at a place called Old Castle, at the foot of the Seneca Lake, near the present lovely village of Geneva. His early history exists only in tradition, which says, “that at the age of seventeen, his abilities, especially his activity in the chase, and his remarkably tenacious memory, attracted the esteem and admiration of his tribe, and he was frequently employed during the war of the Revolution, as a *runner*, to carry despatches,” for the British officers who were engaged on the border service. “In that contest,” says the author above quoted, “he took little or no part as a warrior; and it would appear that, like his celebrated predecessors in rhetorical fame, Demosthenes and Cicero, he better understood how to rouse his countrymen to war than to lead them to victory.” Some incidents relating to his slender military career during the invasion of the Genesee country by General Sullivan, account for the reputation he bore for cowardice, and the enmity and contempt he experienced from the Mohawk chief Brant. After the battle of Newtown, which was so disastrous to the Indians, Red Jacket was accustomed to hold private councils with the young warriors, and some of the more timid sachems, the object of which was to persuade them to sue for peace, and at one time he so far succeeded as to induce them to send privately, and without the knowledge of the principal war chiefs, a runner into General Sullivan’s camp, to make known to him the spirit of dissatisfaction and division that prevailed among the Indians, and to invite him to send a flag of truce with certain propositions calculated to increase their divisions and produce a dishonorable peace. Brant, who was privately informed of all these proceedings, and fearing the consequences of disclosing and attempting to suppress them by forcible means, despatched secretly two confidential warriors to waylay the flag on its return from the American camp, and to put the bearer of it to death, and return with his despatches. This was done with true Indian adroitness, and the purposes of the Seneca chief were thereby frustrated.† During the same campaign an attempt was made by Cornplanter, to oppose General Sullivan’s forces on the beach of the Canandaigua lake. “On the approach of the Americans, a small number of the Indians, among whom was Red Jacket, began to retreat. Cornplanter exerted himself to rally them. He sprang in front of Red Jacket and endeavored to persuade him to fight—but in vain. Whereupon the indignant chief, turning to the young wife of the recreant warrior, exclaimed—‘Leave that man—he is a coward.’”‡

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\* His name of “Red Jacket,” by which he was so long familiarly known among the white people, is said to have been acquired in the following manner: During the war just mentioned, his activity and intelligence attracted the attention of several officers in the service of the British crown, and acquired for him their friendship. One of them, either as a compliment, or for services rendered, “presented him with a richly embroidered scarlet jacket, which he took great pride in wearing. When this was worn out, he was presented with another; and he continued to wear this peculiar dress until it became a mark of distinction, and gave him the name by which he was afterward best known. At the treaty of 1794, held at Canandaigua, Captain Parish, one of the interpreters in the service of the United States, gave him another red jacket, to ‘perpetuate the name to which he was so much attached.’”—*Sketch of Red Jacket, in McKenney’s Indian Biography.*

† Life of Joseph Brant, by William L. Stone, vol. 2, page 35.

‡ History of the Indian Tribes of North America, &c., by Thomas L. McKenney and James Hall vol. 1, page 4.

From this period until the treaty of Fort Stanwix, in the year 1784, the history of Red Jacket is lost. At what time he attained his chieftainship is not known. The Six Nations were lovers of eloquence and cultivators of that art.\* Red Jacket's intellect was of a superior order. He was an orator by nature, and, moreover, as artful and ambitious as he was eloquent. Aspiring to the rank of a chief, he not only wrought upon the minds of his people by the exertion of that faculty, which was ever with them a high standard of merit, but he succeeded in availing himself of the superstitious constitution of his race, to effect his purpose. His first essay was to dream that he was, or should be a chief, and that the Great Spirit was angry that his nation had not advanced him to that dignity. This dream, with the necessary variations, was repeated, until, fortunately for him the small-pox broke out among the Senecas. He then proclaimed the loathsome infliction a judgment sent by the Great Spirit, to punish them for their ingratitude to him. The consequence was, that by administering flattery to some, and working upon the superstitious fears of others, and by awakening the admiration of all by his eloquence, he reached the goal of his ambition. Hence his appearance in the council at Fort Stanwix. On that occasion he was opposed to the treaty of peace, unless the several tribes not included in the Six Nations, might be invited to join the council. His speech on that occasion is characterized, "as a master-piece of oratory," and it has been asserted that every warrior present was carried away by his eloquence. But the commissioners would not listen to such a proposition; and Cornplanter, who was an old and wise man, though less eloquent than Red Jacket, succeeded in giving a favorable termination to the negotiation.†

Cornplanter's agency in the treaty operated unfavorably upon his character, and weakened his influence with his tribe. Aware that Red Jacket was taking advantage of this circumstance to elevate himself in the estimation of his people, he resolved on counteracting him. For this purpose he ordained one of his brothers a prophet, and set him at work to *pou-wou* against his rival and his followers. A council was held at Buffalo Creek, New York, and Red Jacket was assailed in the midst of the tribe, by all those arts that are known to be so powerful over the superstition of the Indian. "At this crisis," says De Witt Clinton, "Red Jacket well knew that the future color of his life depended upon the powers of his mind. He spoke in his defence for near three hours—the iron brow of superstition relented under the magic of his eloquence. He declared the prophet an impostor and a cheat—he prevailed—the Indians divided, and a small majority appeared in his favor. Perhaps the annals of history cannot furnish a more conspicuous instance of the power and triumph of oratory in a barbarous nation, devoted to superstition, and looking up to the accuser as a delegated minister of the Almighty."

In the war of 1812, Red Jacket was disposed to remain neutral, but being overruled by his tribe, engaged in the cause of the Americans, in consequence of an argument which occurred to him, that, "if the British succeed, they will take our country from us; if the Americans drive them back, they will claim our land by right of conquest." His career in that contest redeemed his character from those charges of weakness and cowardice, which had been bestowed upon it during his early years. Opposed to war, not ambitious of martial fame, and unskilled in military affairs, he went to battle from principle, and met its perils with the spirit of a veteran warrior, while he shrunk from its cruelties with the sensibility of a man and a philosopher.

Several interesting anecdotes, which illustrate the character and eloquence of Red Jacket, are preserved in M'Kenney and Hall's valuable work before referred to, from which the following are extracted:—In a council which was held with the Senecas by Governor Tompkins, of New York, a contest arose between that gentleman and Red Jacket, as to a fact connected with a treaty of many years standing. The American agent stated one thing, the Indian chief corrected him, and insisted that the reverse of his assertion was true. But, it was rejoined, "you

\* The most remarkable difference existed between the Confederates [Six Nations] and the other Indians, with respect to eloquence. You may search in vain the records and writings of the past, or in the events of the present times, for a single model of eloquence among the Algonquins, the Delawares, the Shawanese, or any other nation of Indians, except the Iroquois. The few scintillations of intellectual light, the faint glimmerings of genius, which are sometimes to be found in their speeches, are evidently derivative, and borrowed from the Confederates.—*De Witt Clinton: Life and Times of Red Jacket*; page 25.

† Life of Joseph Brant; and the Life and Times of Red Jacket, by William L. Stone.

have forgotten—we have it written down on paper.” “The paper, then, tells a lie,” was the confident answer; “I have it written here,” continued the chief, placing his hand with great dignity upon his brow. “You Yankees are born with a feather between your fingers; but your paper does not speak the truth. The Indian keeps his knowledge here—this is the book the Great Spirit gave us—it does not lie!” A reference was made to the treaty in question, which confirmed every word he had uttered.

Lafayette was present at the treaty of Fort Stanwix, in 1784, and noticed the young warrior, “who declared that when an alliance was entered into with America, he should consider the sun of his country had set for ever.” In his travels through the Indian country, when last in America, it happened at a large assemblage of chiefs, that he referred to the treaty in question, and turning to Red Jacket, said, “pray tell me, if you can, what has become of that daring youth who so decidedly opposed all our propositions for peace and amity! Does he still live, and what is his condition?” “I, myself, am the man,” replied Red Jacket, “the decided enemy of the Americans, so long as the hope of opposing them successfully remained, but now their true and faithful ally until death.”

Red Jacket was an implacable opponent to Christianity and its teachers. Yet he manifested a better disposition towards the Quakers, who had exercised a watchful guardianship over the Alleghany clan of the Senecas, almost from the signing of the treaty of 1783, by means of boards of visitors and resident agents. To them he made an earnest appeal for assistance, or for the exertion of their influence in keeping the missionaries at a distance. On being questioned why he was so much opposed to the missionaries, after a brief pause, he replied: “Because they do us no good. If they are not useful to the white people, why do they send them among the Indians? If they are useful to the white people, and do them good, why do they not keep them at home? They are surely bad enough to need the labor of every one who can make them better. These men know we do not understand their religion. We cannot read their book—they tell us different stories about what it contains, and we believe they make the book talk to suit themselves. If we had no money, no land, and no country to be cheated out of, these black-coats would not trouble themselves about our good hereafter. The Great Spirit will not punish us for what we do not know. He will do justice to his red children. These black-coats talk to the Great Spirit, and ask for light, that we may see as they do, when they are blind themselves, and quarrel about the light which guides them. These things we do not understand, and the light they give us makes the straight and plain path trod by our fathers dark and dreary. The black-coats tell us to work and raise corn; they do nothing themselves, and would starve to death if somebody did not feed them. All they do is to pray to the Great Spirit; but that will not make corn or potatoes grow; if it will, why do they beg from us and from the white people? The red men knew nothing of trouble until it came from the white men; as soon as they crossed the great waters they wanted our country, and in return have always been ready to teach us to quarrel about their religion. Red Jacket can never be the friend of such men. The Indians can never be civilized—they are not like white men. If they were raised among the white people, and learned to work, and to read as they do, it would only make their situations worse. They would be treated no better than negroes. We are few and weak, but may for a long time be happy if we hold fast to our country and the religion of our fathers!”\*

The chief object of the life of Red Jacket was to preserve the independence of his people. His opposition to Christianity, to the education and civilization of his tribe, he maintained till his death. This took place on the twentieth of January, 1830. For some time previous, fully sensible of his approaching dissolution, he conversed on the subject with philosophic calmness. He visited successively all his most intimate friends at their cabins, and talked with them upon the condition of their nation, in the most impressive and affecting manner. He told them that he was passing away, and his counsels would be heard no more. He ran over the history of his people from the most remote period to which his knowledge extended, and pointed out, as few could, the wrongs, the privations, and the loss of character, which almost of themselves

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\* Colonel M'Kenney's Indian Biography.

constituted that history. "I am about to leave you," he said, "and when I am gone, and my warnings shall be no longer heard or regarded, the craft and avarice of the white man will prevail. Many winters have I breasted the storm; but I am an aged tree, and can stand no longer. My leaves are fallen, my branches are withered, and I am shaken by every breeze. Soon my aged trunk will be prostrate, and the foot of the exulting foe of the Indian may be placed upon it in safety; for I have none who will be able to avenge such an indignity. Think not I mourn for myself. I go to join the spirits of my fathers, where age cannot come; but my heart fails when I think of my people, who are so soon to be scattered and forgotten." These several interviews were all concluded with particular instructions respecting his domestic affairs and his funeral. "Bury me," said he, "by the side of my former wife; and let my funeral be according to the customs of our nation. Let me be dressed and equipped as my fathers were, that their spirits may rejoice at my coming. Be sure that my grave be not made by a white man; let them not pursue me there."\*

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#### REPLY TO SAMUEL DEXTER.

A succession of outrages upon the Indians residing along the Pennsylvania border, resulting at different times in the murder of several of their people, induced the Senecas and Tuscaroras in February, 1801, to send a deputation of their chiefs to the seat of the Federal Government, which, since the last Seneca embassy, had been transferred from Philadelphia to the City of Washington. Red Jacket was at the head of this deputation, which was received formally, with an appropriate speech, by the acting Secretary at War, Samuel Dexter, on the 10th of February. On the 11th, Red Jacket replied, setting forth the business of his mission in the following speech:

BROTHER: We yesterday received your speech, which removed all uneasiness from our minds. We then told you that should it please the Great Spirit to permit us to rise in health this day, you should hear what we have come to say.

BROTHER: The business on which we are now come, is to restore the friendship that has existed between the United States and the Six Nations, agreeably to the direction of the commissioner from the fifteen fires of the United States. He assured us that whensoever, by any grievances, the chain of friendship should become rusty, we might have it brightened by calling on you. We dispense with the usual formality of having your speech again read, as we fully comprehended it yesterday, and it would therefore be useless to waste time in a repetition of it.

BROTHER: Yesterday you wiped the tears from our eyes, that we might see clearly; you

unstopped our ears that we might hear; and removed the obstructions from our throats that we might speak distinctly. You offered to join with us in tearing up the largest pine tree in our forests, and under it to bury the tomahawk. We gladly join with you, brother, in this work, and let us heap rocks and stones on the root of this tree, that the tomahawk may never again be found.

BROTHER: Your apology for not having wampum is sufficient, and we agree to accept of your speeches on paper, to evince our sincerity in wishing the tomahawk for ever buried. We accompany a repetition of our assurances with these strings. [*Strings of Wampum.*]

BROTHER: We always desire, on similar melancholy occasions, to go through our customary forms of condolence, and have been happy to find the officers of the government of the United States willing in this manner to make our minds easy.

BROTHER: We observe that the men now in office are new men, and, we fear, not fully informed of all that has befallen us. In 1791, a treaty was held by the commissioners of Congress with us at Tioga Point, on a similar occasion. We have lost seven of our warriors, murdered in cold blood by white men, since the conclusion of the war. We are tired of this mighty grievance, and wish some general arrangement to prevent it in future. The first of these was murdered on the banks of the Ohio, near Fort Pitt. Shortly after, two men belonging to our first families, were murdered at Pine Creek; then one at Fort Franklin; another at Tioga Point; and now the two that occasion this visit, on the Big Beaver. These last two had families. The one was a Seneca; the other a Tuscarora. Their families are now destitute of support; and we think that the United States should do something toward their support, as it is to the United States they owe the loss of their heads.

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\* Sketch of Red Jacket in M'Kenney's Indian Biography.



**BROTHER:** These offences are always committed in one place on the frontier of Pennsylvania. In the Genesee country we live happy, and no one molests us. I must, therefore, beg that the President will exert all his influence with all officers, civil and military, in that quarter, to remedy this grievance, and trust that he will thus prevent a repetition of it, and save our blood from being spilled in future. [*A Belt.*]

**BROTHER:** Let me call to mind the treaty between the United States and the Six Nations, concluded at Canandaigua. At that treaty, Col. Pickering, who was commissioner on behalf of the United States, agreed that the United States should pay to the Six Nations four thousand five hundred dollars per annum, and that this should pass through the hands of the superintendent of the United States, to be appointed for that purpose. This treaty was made in the name of the President of the United States, who was then General Washington; and as he is now no more, perhaps the present President would wish to renew the treaty. But if he should think the old one valid, and is willing to let it remain in force, we are also willing. The sum above mentioned we wish to have part of in money, to expend in more agricultural tools, and in purchasing a team, as we have some horses that will do for the purpose. We also wish to build a saw-mill on the Buffalo Creek. If the President, however, thinks proper to have it continue as heretofore, we shall not be very uneasy. Whatever he may do we agree to; we only suggest this for his consideration. [*A Belt.*]

**BROTHER:** I hand you the above-mentioned treaty, made by Colonel Pickering, in the name of General Washington, and the belt that accompanied it; as he is now dead, we know not

if it is still valid. If not, we wish it renewed—if it is, we wish it copied on clean parchment. Our money got loose in our trunk and tore it. We also show you the belt which is the path of peace between our Six Nations and the United States. [*Treaty and two Belts.*]

**BROTHER:** A request was forwarded by us from the Onondaga Nation to the Governor of New York, that he should appoint a commissioner to hold a treaty with them. They have a reservation surrounded by white men which they wish to sell. The Cayugas, also, have a reservation so surrounded that they have been forced to leave it, and they hope that the President's commissioner, whom they expect he will not hesitate to appoint, will be instructed to attend to this business. We also have some business with New York, which we would wish him to attend to.

**BROTHER:** The business that has caused this our long journey, was occasioned by some of your bad men: the expense of it has been heavy on us. We beg that as so great a breach has been made on your part, the President will judge it proper that the United States should bear our expenses to and from home, and whilst here

**BROTHER:** Three horses belonging to the Tuscarora Nation were killed by some men under the command of Major Rivardi, on the plains of Niagara. They have made application to the superintendent and to Major Rivardi, but get no redress. You make us pay for our breaches of the peace, why should you not pay also? A white man has told us the horses were killed by Major Rivardi's orders, who said they should not be permitted to come there, although it was an open common on which they were killed. Mr. Chapin has the papers respecting these horses, which we request you to take into consideration.\*

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#### DEFENCE OF STIFF-ARMED-GEORGE.

Some time during the year 1802, John Hewitt, a white man, was murdered at Buffalo Creek, by Stiff-armed-George, an Indian, who was intoxicated at the time he committed the act. His surrender was demanded by the civil authorities of New York. This demand was resisted, the fact of drunkenness on the part of the offender, being pleaded in extenuation of the crime. After several meetings between the

Indians and the citizens, in which the latter had vainly attempted to persuade the former to surrender the culprit, a council of the principal chiefs of the Senecas, Cayugas, and Onondagas, was convened at Canandaigua, to give the question a more solemn consideration. A conference having been arranged between the council and the principal inhabitants, Red Jacket, arguing against the surrender upon the principles already indicated, delivered the following speech, addressed particularly to the white portion of his audience:

**BROTHERS:** Open your ears, and give your attention. This day is appointed by the Great Spirit to meet our friends at this place. During

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\* Mr. Dexter answered the deputation on the 16th, and in the name of the President, (the elder Adams,) promised a thorough investigation into the circumstances of the murders complained of, a compliance with their wishes touching an exchange of certain lands, and payment for the horses killed at Niagara. The expenses of their mission were also directed to be paid.—*Stone's Life of Red Jacket.*

the many years that we have lived together in this country, good will and harmony have subsisted among us.

BROTHERS: We have now come forward on an unhappy occasion. We cannot find words to express our feelings upon it. One of our people has murdered one of your people. So it has been ordered by the Great Spirit, who controls all events. This has been done: we cannot now help it. At first view it would seem to have the effect of putting an end to our friendship; but let us reflect, and put our minds together. Can't we point out measures whereby our peace and harmony may still be preserved? We have come forward to this place, where we have always had a superintendent and friend to receive us, and to make known to him such grievances as lay upon our minds; but now we have none; and we have no guardian,—no protector,—no one is now authorized to receive us.

BROTHERS: We, therefore, now call upon you to take our speech in writing, and forward our ideas to the President of the United States.

BROTHERS: Let us look back to our former situation. While you were under the government of Great Britain, Sir William Johnson was our superintendent, appointed by the king. He had power to settle offences of this kind among all the Indian nations, without adverting to the laws. But under the British government you were uneasy,—you wanted to change it for a better. General Washington went forward as your leader. From his exertions you gained your independence. Immediately afterward a treaty was made between the United States and the Six Nations, whereby a method was pointed out of redressing such an accident as the present. Several such accidents did happen, where we were the sufferers. We now crave the same privilege in making restitution to you, that you adopted toward us in a similar situation.

BROTHERS: At the close of our treaty at Philadelphia, General Washington told us that we had formed a chain of friendship which was bright: he hoped it would continue so on our part: that the United States would be equally willing to brighten it, if rusted by any means. A number of murders have been committed on our people—we shall only mention the last of them. About two years ago, a few of our warriors were amusing themselves in the woods, to the westward of Fort Pitt; two white men coolly and deliberately took their rifles, travelled nearly three miles to our encampment, fired upon the Indians, killed two men and wounded two children. We then were the party injured. What did we do? We flew to the treaty, and thereby obtained redress, perfectly satisfactory to us, and we hope agreeable to you. This was done a short time before President Adams went out of office: complete peace and harmony was restored. We now want the same method of redress to be pursued.

BROTHERS: How did the present accident take place? Did our warriors go from home cool and sober, and commit murder on you?

No. Our brother was in liquor, and a quarrel ensued, in which the unhappy accident happened. We would not excuse him on account of his being in liquor; but such a thing was far from his intention in his sober moments. We are all extremely grieved at it, and are willing to come forward and have it settled, as crimes of the same nature have heretofore been.

BROTHERS: Since this accident has taken place, we have been informed that, by the laws of this State, if a murder is committed within it, the murderer must be tried by the laws of the State, and punished with death.

BROTHERS: When were such laws explained to us? Did we ever make a treaty with the State of New York, and agree to conform to its laws? No. We are independent of the State of New York. It was the will of the Great Spirit to create us different in color: we have different laws, habits, and customs, from the white people. We shall never consent that the government of this State shall try our brother. We appeal to the government of the United States.

BROTHERS: Under the customs and habits of our forefathers we were a happy people; we had laws of our own; they were dear to us. The whites came among us and introduced their customs; they introduced liquor among us, which our forefathers always told us would prove our ruin.

BROTHERS: In consequence of the introduction of liquor among us, numbers of our people were killed. A council was held to consider of a remedy, at which it was agreed by us that no private revenge should take place for any such murder—that it was decreed by the Great Spirit, and that a council should be called to consider of redress to the friends of the deceased.

BROTHERS: The President of the United States is called a great man, possessing great power. He may do what he pleases,—he may turn men out of office,—men who held their offices long before he held his. If he can do these things, can he not even control the laws of this State? Can he not appoint a commissioner to come forward to our country and settle the present difference, as we, on our part, have heretofore often done to him, upon a similar occasion?

We now call upon you, BROTHERS, to represent these things to the President, and we trust that he will not refuse our request of sending a commissioner to us, with powers to settle the present difference. The consequence of a refusal may be serious. We are determined that our brother shall not be tried by the laws of the State of New York. Their laws make no difference between a crime committed in liquor, and one committed coolly and deliberately. Our laws are different, as we have before stated. If tried here, our brother must be hanged. We cannot submit to that;—has a murder been committed upon our people, when was it punished with death?

**BROTHERS:** We have now finished what we had to say on the subject of the murder. We wish to address you upon another, and to have our ideas communicated to the President upon it also.

**BROTHERS:** It was understood at the treaty concluded by Colonel Pickering, that our superintendent should reside in the town of Canandaigua, and for very good reasons: that situation is the most central to the Six Nations; and by subsequent treaties between the State of New York and the Indians, there are still stronger reasons why he should reside here, principally on account of the annuities being stipulated to be paid to our superintendent at this place. These treaties are sacred. If their superintendent resides elsewhere, the State may object to sending their money to him at a greater distance. We would, therefore, wish our superintendent to reside here at all events.

**BROTHERS:** With regard to the appointment of our present superintendent, we look upon ourselves as much neglected and injured. When General Chapin and Captain Chapin were appointed, our wishes were consulted upon the occasion, and we most cordially agreed to the appointments. Captain Chapin has been turned

out, however, within these few days. We do not understand that any neglect of duty has been alleged against him. We are told it is because he differs from the President in his sentiments on government matters. He has also been perfectly satisfactory to us; and had we known of the intention, we should most cordially have united in a petition to the President, to continue him in office. We feel ourselves injured—we have nobody to look to—nobody to listen to our complaints—none to reconcile any differences among us. We are like a young family without a father.\*

**BROTHERS:** We understand that the President has appointed a superintendent who is altogether unknown to us, and who is unacquainted with Indian affairs. We know him not in our country. Had we been consulted upon the subject, we might have named some one residing in this country, who was well known to us. Perhaps we might have agreed upon Mr. Oliver Phelps, whose politics, coinciding with those of the President, might have recommended him to the office.

**BROTHERS:** We cannot conclude without again urging you to make known all these our sentiments to the President.†

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#### REPLY TO MR. CRAM.

In the summer of 1805, a young Missionary named Cram, was sent into the country of the Six Nations, by the Evangelical Missionary Society of Massachusetts, to found a mission among the Senecas. A council of their chiefs was convoked to hear his propositions. These were made in a short speech, to which the Indians listened with earnest attention.

After a long consultation among themselves, Red Jacket rose, and spoke as follows:

**FRIEND AND BROTHER:** It was the will of the Great Spirit that we should meet together this day. He orders all things, and has given us a fine day for our council. He has taken his garment from before the sun, and caused it to shine with brightness upon us. Our eyes are opened, that we see clearly; our ears are unstopped, that we have been able to hear distinctly the words you have spoken. For all these favors we thank the Great Spirit; and Him only.

**BROTHER:** This council fire was kindled by you. It was at your request that we came together at this time. We have listened with attention to what you have said. You requested us to speak our minds freely. This gives us great joy; for we now consider that we stand upright before you, and can speak what we think. All have heard your voice, and all

speak to you now as one man. Our minds are agreed.

**BROTHER:** You say you want an answer to your talk before you leave this place. It is right you should have one, as you are a great distance from home, and we do not wish to detain you. But we will first look back a little, and tell you what our fathers have told us, and what we have heard from the white people.

**BROTHER:** Listen to what we say. There was a time when our forefathers owned this great island. Their seats extended from the rising to the setting sun. The Great Spirit had made it for the use of Indians. He had created the buffalo, the deer, and other animals

\* Captain Chapin was removed by President Jefferson, as here stated.

† The eloquent pleadings of the Indians were unavailing. They were compelled to surrender the offender to the inexorable law of the white man, though it was done with great reluctance. His name was *Stiff-armed-George*. He was tried and convicted at the Oyer and Terminer of Ontario County, on the 28d of February, 1808—Brockholst Livingston, one of the justices of the Supreme Court, presiding but as the murder was without pre-existing malice, and was moreover attended by various mitigating circumstances, the court, the attorney-general, the grand jury that indicted him, together with many of the people of Canandaigua, united in a petition to the Governor, George Clinton, for his pardon.—*Stone's Life of Red Jacket*.

for food. He had made the bear and the beaver. Their skins served us for clothing. He had scattered them over the country, and taught us how to take them. He had caused the earth to produce corn for bread. All this He had done for his red children, because He loved them. If we had some disputes about our hunting ground, they were generally settled without the shedding of much blood. But an evil day came upon us. Your forefathers crossed the great water, and landed on this island. Their numbers were small. They found friends and not enemies. They told us they had fled from their own country for fear of wicked men, and had come here to enjoy their religion. They asked for a small seat. We took pity on them; granted their request; and they sat down amongst us. We gave them corn and meat; they gave us poison\* in return.

The white people, brother, had now found our country. Tidings were carried back, and more came amongst us. Yet we did not fear them. We took them to be friends. They called us brothers. We believed them, and gave them a larger seat. At length their numbers had greatly increased. They wanted more land; they wanted our country. Our eyes were opened, and our minds became uneasy. Wars took place. Indians were hired to fight against Indians, and many of our people were destroyed. They also brought strong liquor amongst us. It was strong and powerful, and has slain thousands.

BROTHER: Our seats were once large, and yours were small. You have now become a great people, and we have scarcely a place left to spread our blankets. You have got our country, but are not satisfied, you want to force your religion upon us.

BROTHER: Continue to listen. You say that you are sent to instruct us how to worship the Great Spirit agreeably to his mind; and, if we do not take hold of the religion which you white people teach, we shall be unhappy hereafter. You say that you are right, and we are lost. How do we know this to be true? We understand that your religion is written in a book. If it was intended for us as well as you, why has not the Great Spirit given to us, and not only to us, but why did he not give to our forefathers, the knowledge of that book, with the means of understanding it rightly? We only know what you tell us about it. How shall we

know when to believe, being so often deceived by the white people?

BROTHER: You say there is but one way to worship and serve the Great Spirit. If there is but one religion, why do you white people differ so much about it? Why not all agreed, as you can all read the book?

BROTHER: We do not understand these things. We are told that your religion was given to your forefathers, and has been handed down from father to son. We also have a religion, which was given to our forefathers, and has been handed down to us, their children. We worship in that way. It teaches us to be thankful for all the favors we receive; to love each other, and to be united. We never quarrel about religion.

BROTHER: The Great Spirit has made us all, but He has made a great difference between his white and red children. He has given us different complexions and different customs. To you He has given the arts. To these He has not opened our eyes. We know these things to be true. Since He has made so great a difference between us in other things, why may we not conclude that he has given us a different religion according to our understanding? The Great Spirit does right. He knows what is best for his children; we are satisfied.

BROTHER: We do not wish to destroy your religion, or take it from you. We only want to enjoy our own.

BROTHER: You say you have not come to get our land or our money, but to enlighten our minds. I will now tell you that I have been at your meetings, and saw you collect money from the meeting. I cannot tell what this money was intended for, but suppose that it was for your minister, and if we should conform to your way of thinking, perhaps you may want some from us.

BROTHER: We are told that you have been preaching to the white people in this place. These people are our neighbors. We are acquainted with them. We will wait a little while, and see what effect your preaching has upon them. If we find it does them good, makes them honest, and less disposed to cheat Indians, we will then consider again of what you have said.

BROTHER: You have now heard our answer to your talk, and this is all we have to say at present. As we are going to part, we will come and take you by the hand, and hope the Great Spirit will protect you on your journey, and return you safe to your friends.

\* Rum.

## URIAH TRACY.

THIS eminent and accomplished statesman was born in the year 1754. His early youth was devoted to the acquisition of the rudiments of a liberal education; and, in 1778, with Joel Barlow, Noah Webster, Oliver Wolcott, and other distinguished personages, he graduated at Yale College, with a high reputation for eloquence and erudition. Directing his attention to the profession of the law, by the strength of his talents and a rigid devotion to business, he soon rose to eminence and acquired a lucrative practice.

From this period of his life until his election to the lower House of Congress, in 1793, little is known of him. In the autumn of 1796, he was elected to the United States Senate, and on taking his seat in that assembly, at once became a distinguished and important member, admired by his political friends and respected by his opponents. Joseph Hopkinson, himself one of the ablest associates of Mr. Tracy, thus speaks of the "members from New England," who were in the habit of spending their evenings at his house. "When I mention such names as Ellsworth, Ames, Griswold, Goodrich, Tracy and others, you may imagine what a rich and intellectual society it was. I will not say that we have no such now, but I don't know where they are."\*

In wit and humor, Mr. Tracy was unrivalled, and his sarcasm was alike dreaded in the Senate chamber and the drawing-room. An anecdote of his sarcastic power is preserved, alike commemorative of the beauty and brilliancy of the circle in which he moved, and his own peculiar wit. "Mr. Liston, who succeeded Mr. Hammond as British Minister at Philadelphia, and who was thoroughly English in his ideas, on one occasion remarked to Mr. Tracy—'Your countrywoman, would be admired even at St. James's.' 'Sir,' retorted the Senator from Connecticut, 'she is admired even on Litchfield Hill.'"+

The speeches of Mr. Tracy, while a member of the Congress, were sometimes perhaps tinged with severity; but the ardor of debate, the rapidity of his ideas, and the impetuosity of his eloquence always constituted an apology. He was firmly attached to the administration of John Adams, the principles of which he ever advocated and sustained. Among the many incidents that have been related, illustrating his political career, is the following. "Toward the latter part of Adams's administration, the latter nominated to office a connection of his family, by the name of Johnson, formerly a federalist, but recently turned democrat. This was offensive to the federalists, and Tracy, then of the Senate, being regarded as a skilful diplomat, was

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\* *Memoirs of the Administration of Washington and John Adams*, by George Gibbs.

† The vicinity of the residence of Oliver Wolcott:—At the time of Mr. Tracy's residence in Philadelphia, a society existed there, marked by every characteristic which could recommend it to one of a cultivated mind and a social disposition, embracing much of the genius, the worth, and no little of the wit and beauty of the country. Of this society two members of the family of Oliver Wolcott, his younger sister and his wife, were themselves no inconspicuous ornaments. The former, married to Chauncey Goodrich, was distinguished for her personal beauty and brilliant conversation; Mrs. Wolcott, with less beauty had still a countenance of much loveliness, and manners graceful and dignified. To the most feminine gentleness of disposition, she added sound sense, and that kind of cultivation which is acquired in intercourse with thinkers. Both belonged to a class of women of whom Connecticut could then boast many, whose minds were formed, and habits of reflection directed by men; and without coming within the category of female politicians, they had been almost from childhood familiar with questions of public and general interest.—*Administrations of Washington and John Adams*.

appointed to go and remonstrate with the President. He accordingly went, and having put his Excellency in excellent humor, by some of his best stories, at last said—

“By the way, we have been thinking over this nomination of Johnson, and find there is a good deal of objection to him. The democrats will oppose him, because you nominated him; and some of the federalists will oppose him, because he is a democrat. We fear that if he goes to a vote, he will fail of a confirmation. As it would be unfortunate, just now, to have the administration defeated, your friends have requested me to suggest to your Excellency whether it would not be best to withdraw his name and substitute another?”

The President thrust his hands into his breeches pockets, and strode fiercely across the room: then coming up to Tracy, he said—“No, sir, no—that—Boston Junto will never be satisfied till they drive me and my family back to Braintree to dig potatoes. No, sir—I’ll not withdraw it!”\*

During the latter years of Mr. Tracy’s life he experienced frequent and severe illness. In the spring of the year 1807, while in a feeble state of health, he exposed himself in attending the funeral of Abraham Baldwin, his former fellow-student and colleague in the Senate. Rapidly declining, he died at Washington, on the nineteenth of July, 1807. His death was deeply deplored, and from the useful talents he possessed, was justly considered a national loss.†

#### AMENDMENT OF THE CONSTITUTION.

The following speech on a proposed amendment of the Constitution of the United States, relative to the mode of electing the President and Vice-President, was delivered by Mr. Tracy, in the United States Senate, on the second day of December, 1802.

MR. PRESIDENT: I moved an adjournment, because I thought a more full and fair discussion was due to this important question, than could be had after this late hour.

The merits have never, until now, been before us, for although considerable time has been consumed in debate, it has chiefly been directed to the subordinate amendments, and not to the main resolution. But since the Senate have refused to adjourn, I will now offer some observations on the merits, in doing which, I will study brevity, as much as the importance of the subject will permit.

I shall attempt to prove, sir, that the resolution, ‡ before us, contains principles which have

a manifest tendency to deprive the small States of an important right, secured to them by a solemn and constitutional compact, and to vest an overwhelming power in the great States. And, further, I shall attempt to show, that in many other points the resolution is objectionable, and for a variety of causes, ought not to be adopted.

As I shall be obliged, in delineating the main features of this resolution, to mention the great States in the Union as objects of jealousy, I wish it to be understood, that no special stigma is intended. “Man is man,” was the maxim expressed, in an early part of this debate, by the gentleman from South Carolina, Mr. Butler, and, in application to the subject of government, the maxim is worthy to be written in letters of gold. Yes, sir, “man is man,” and the melancholy truth, that he is always imperfect and frequently wicked, induces us to fear his power, and guard against his rapacity, by the establishment and preservation of laws, and well regulated constitutions of government.

\* Recollections of a Lifetime, by S. G. Goodrich, vol. 2, page 92.

† See New York Evening Post, 1807.

‡ The resolution was as follows: *Resolved*, By the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, that in lieu of the third paragraph of the first section of the second article of the Constitution of the United States, the following be proposed as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the legislatures of the several States, shall be valid to all intents and purposes, as part of the said constitution, to wit:

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots, the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted

Man, when connected with very many of his fellow-men, in a great State, derives power from the circumstance of this numerous combination; and from every circumstance, which clothes him with additional power, he will generally derive some additional force to his passions.

Having premised this, I shall not deem it requisite to make any apology, when I attempt to excite the attention, the vigilance, and even the jealousy of the small, in reference to the conduct of the great States. The caution is meant to apply against the imperfections and passions of man, generally, and not against any State, or description of men, particularly.

Mr. Tracy here made some observations explanatory of his meaning, when he used the words small and great, as applicable to States.

It will be recollected, that, in the various turns which this debate has taken, gentlemen have repeatedly said, that the constitution was formed for the people, that the good of the whole was its object, that nothing was discernible in it like a contest of States, nothing like jealousy of small States against the great; and although such distinctions and jealousies might have existed under the first confederation; yet they could have no existence under the last. And one gentleman, Mr. Smith, of Maryland, has said, that he has been a member of this government ten years, and has heard nothing of great and small States, as in the least affecting the operations of government, or the feelings of those who administer it. Propriety, therefore, requires, that we attentively examine the constitution itself, not only to obtain correct ideas upon these observations, so repeatedly urged; but to place, in the proper light, the operations and effects of the resolution in debate.

If we attend to the constitution, we shall

The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States must be necessary to a choice.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice-President of the United States.

immediately find evident marks of concession and compromise; and that the parties to these concessions were the great and small States. And the members of the convention who formed the instrument, have, in private information and public communications, united in the declaration, that the constitution was the result of concession and compromise between the great and small States. In this examination of the constitution, it will be impossible to keep out of view our political relations under the first confederation. We primarily united upon the footing of complete State equality; each State had one, and no State had more than one vote in the federal council or Congress. With such a confederation we successfully waged war, and became an independent nation. When we were relieved from the pressure of war, that confederation, both in structure and power, was found inadequate to the purposes for which it was established. Under these circumstances, the States, by their convention, entered into a new agreement, upon principles better adapted to promote their mutual security and happiness. But this last agreement, or Constitution, under which we are now united, was manifestly carved out of the first confederation. The small States adhered tenaciously to the principles of State equality, and gave up only a part of this federative principle, complete State equality, and that with evident caution and reluctance. To this federative principle they were attached by habit; and their attachment was sanctioned and corroborated by the example of most, if not all the ancient and the modern confederacies. And when the great States claimed a weight in the councils of the nation proportionate to their numbers and wealth, the novelty of the claim, as well as its obvious tendency to reduce the sovereignty of the small States, must have produced serious obstacles to its admission. Hence it is, that we find in the constitution but one entire departure from the federal principle. The House of Representatives is established upon the popular principle and given to numbers and wealth, or to the great States, which, in this view of the subject are synonymous. It was thought by the convention, that a consolidation of the States into one simple republic, would be improper: and the local feelings and jealousies of all, but more especially of the small States, rendered a consolidation impracticable. The Senate, who have the power of a legislative check upon the House of Representatives, and many other extensive and important powers, is preserved as an entire federative feature of government, as it was enjoyed by the small States, under the first confederacy.

In the article which obliges the electors of President to vote for one person not an inhabitant of the same State with themselves, is discovered State jealousy. In the majorities required for many purposes by the constitution, although there were other motives for the regulations, yet the jealousy of the small States is

clearly discernible. Indeed, sir, if we peruse the constitution with attention, we shall find the small States are perpetually guarding the federative principle, that is, State equality: and this, in every part of it, except in the choice of the House of Representatives, and in their ordinary legislative proceedings. They go so far as to prohibit any amendment which may affect the equality of States in the Senate. This is guarding against almost an impossibility; because the Senators of small States must be criminally remiss in their attendance, and the legislatures extremely off their guard, if they permit such alterations, which aim at their own existence. But lest some accident, some unaccountable blindness or perfidy should put in jeopardy the federative principle in the Senate, they totally and for ever prohibit all attempts at such a measure.

In the choice of President, the mutual caution and concession of the great and small States, is, if possible, more conspicuous than in any other part of the constitution. He is to be chosen by electors appointed as the State legislatures shall direct, not according to numbers entirely, but adding two electors in each State as representatives of State sovereignty. Thus Delaware obtains three votes for President, whereas she could have but one in right of numbers. Yet, mixed as this mode of choice is, with both popular and federative principles, we see the small States watching its motions and circumscribing it to one attempt only; and on failure of an electoral choice, they instantly seize upon the right of a federal election, and select from the candidates a President, by States, and not by numbers. In confirmation of my assertion, that this part of the constitution was peculiarly the effect of compromise between the great and small States, permit me to quote an authority, which will certainly have great weight, not only in the Senate, but through the Union, I mean that of the present Secretary of State, Mr. Madison, who was a leading member of the federal convention who formed, and of the Virginia convention, who adopted the constitution. In the Debates of the Virginia Convention, volume three, page seventy-seven, he says, speaking of the mode of electing the President, "As to the eventual voting by States, it has my approbation. The lesser States and some larger States will be generally pleased by that mode. The deputies from the small States argued, and there is some force in their reasoning, that when the people voted, the large States evidently had the advantage over the rest, and without varying the mode, the interests of the little States might be neglected or sacrificed. Here is a compromise. For, in the eventual election, the small States will have the advantage."

After this view of the constitution, let us inquire, what is the direct object of the proposed alteration in the choice of President? To render more practicable and certain the choice by electors: and for this reason; that

the people at large, or, in other words, that the great States, ought to have more weight and influence in the choice; that it should be brought nearer to the popular, and carried further from the federative principle. This claim, we find was made at the formation of the constitution. The great States naturally wished for a popular choice of first magistrate: this mode was sanctioned by the example of many of the States, in the choice of governor. The small States claimed a choice on the federative principle, by the legislatures, and to vote by States: analogies and examples were not wanting to sanction this mode of election. A consideration of the weight and influence of a President of this Union, must have multiplied the difficulties of agreeing upon the mode of choice. But, as I have before said, by mutual concession, they agreed upon the present mode, combining both principles and dividing between the two parties, thus mutually jealous, as they could, this important privilege of electing a chief magistrate. This mode then became established, and the right of the small States to elect upon the federative principle, or by States, in case of contingency of electoral failure of choice, cannot, with reason and fairness, be taken from them without their consent, and on a full understanding of its operation; since it was meant to be secured to them by the constitution, and was one of the terms upon which they became members of the present confederacy; and for which privilege they gave an equivalent to the great States, in sacrificing so much of the federative principle, or State equality.

The constitution is nicely balanced, with the federative and popular principles; the Senate are the guardians of the former, and the House of Representatives of the latter; and any attempts to destroy this balance, under whatever specious names or pretences they may be presented, should be watched with a jealous eye. Perhaps a fair definition of the constitutional power of amending is, that you may, upon experiment, so modify the constitution, in its practice and operation, as to give it, upon its own principles, a more complete effect. But this is an attack upon a fundamental principle established after a long deliberation, and by mutual concession—a principle of essential importance to the instrument itself, and an attempt to wrest from the small States a vested right, and, by it, to increase the power and influence of the large States. I shall not pretend, sir, that the parties to this constitutional compact, cannot alter its original, essential principles; and that such alterations may not be effected under the name of amendment; but, let a proposal of that kind come forward in its own proper and undisguised shape; let it be fairly stated to Congress, to the State legislatures, to the people at large, that the intention is to change an important federative feature in the constitution, which change, in itself, and all its consequences, will tend to a consolidation of this Union into a simple republic; let it be



fairly stated that the small States have too much agency in the important article of electing a chief magistrate, and that the great States claim the choice, and we shall then have a fair decision. If the senators of the small States, and if their State legislatures will then quietly part with the right they have, no person can reasonably complain.

Nothing can be more obvious, than the intention of the plan, adopted by our constitution, for choosing a President. The electors are to nominate two persons, of whom they cannot know which will be President; this circumstance not only induces them to select both from the best men, but gives a direct advantage into the hands of the small States, even in the electoral choice. For they can always select from the two candidates, set up by the electors of large States, by throwing their votes upon their favorite, and of course giving him a majority; or, if the electors of the large States should, to prevent this effect, scatter their votes for one candidate, then the electors of the small States would have it in their power to elect a Vice-President. So that, in any event, the small States will have a considerable agency in the election. But if the discriminating or designating principle is carried, as contained in this resolution, the whole, or nearly the whole right and agency of the small States in the electoral choice of chief magistrate, is destroyed, and their chance of obtaining a federative choice by States, if not destroyed, is very much diminished. For this identical purpose is the principle of electoral discrimination and designation, introduced into the resolution before you; for the same purpose is the number of candidates reduced from five to three, from whom the House of Representatives may elect, in case of electoral failure of choice; that is, to destroy, or diminish the agency of the small States, in the choice of President. For what purpose else, are we perpetually told, and from all parts of the Senate, that the public will is opposed by the present mode, and the public will cannot be gratified without the introduction of the discriminating principle. By the public will thus mentioned, the gentlemen mean the will of a popular majority, or the will of the great States, which, in this case, I repeat it, are the same. How is it possible for the gentlemen to increase the chances of gratifying this description of the public will without decreasing the agency of the small States?

The whole power of election is now vested in the two parties—numbers and States, or great and small States; and it is demonstration itself, that if you increase the power of the one, in just such proportion you diminish that of the other. Do the gentlemen suppose, that the public will, when constitutionally expressed, by a majority of States, in pursuance of the federative principle of our government, is of less validity, or less binding upon the community at large, than the public will expressed by a popular majority? The framers of your con-

stitution, the people who adopted it, meant, that the public will, in the choice of a President, should be expressed by electors, if they could agree; and if not, that the public will should be expressed by a majority of the States, acting in their federative capacity, and that, in both cases, the expression of the public will should be equally binding. Is it pretended that the public will can never, properly or constitutionally, be expressed, but by a majority of numbers, of the people or of the House of Representatives? This may be a pleasing doctrine enough to great States; but it is certainly incorrect. Our constitution has given the expression of the public will, in a variety of instances, other than that of the choice of President, into very different hands from either the House of Representatives or the people at large. The President and Senate, and in many cases the President alone, can express the public will in appointments of high trust and responsibility, and it cannot be forgotten that the President sometimes expresses the public will, by removals. Treaties, highly important expressions of the public will, are made by the President and Senate; and they are the supreme law of the land. In the several States, many great offices are filled, and even the chief magistracy by various modes of election. The public will is sometimes expressed by pluralities, instead of majorities; sometimes by both branches of the legislatures, and sometimes by one; and in certain contingencies, elections are settled by lot. The people have adopted constitutions containing such regulations, and experience has proved that they are well calculated to preserve their liberties and promote their happiness. From what good, or even pardonable motive, then, can it be urged, that the present mode of electing our President, has a tendency to counteract the public will? Do gentlemen intend to destroy every federal feature in this constitution? And is this resolution a precursor to a complete consolidation of the Union, and to the establishment of a simple republic? Or will it suffice to break down every federative feature, which secures to one portion of the Union, to the small States, their rights? I am not without my fears, Mr. President, that this is but the beginning of evils, and that this constitution, the bulwark of the feeble members of the confederacy; the protection of the weak against the strong; the security of the small against the great; the last, best hope of man, with a view to stability in a free government, and to the preservation of liberty in a republic; is destined to undergo changes, and suffer innovations, till there be no residue worth preserving, and nothing left, which ambition will condescend to overturn.

Time will not permit me to dwell any longer on this part of my argument. But I am deceived, sir, if the view I have now taken of the constitution, does not show most obviously, that in its formation, there was a struggle between the great and small States, with respect to

many of its principles and leading features: and that the participation in the election of a chief magistrate, clearly secured to them by the constitution, will receive a deadly blow by the adoption of the proposed amendment.

It can be no contradiction to my ideas upon the subject, if we have heard nothing of State conflicts, in the administration of this government. The great States have never, till now, directly attempted to violate the sanctuary of the small, and despoil them of their rights; had this been earlier attempted, we should have heard and seen the same jealousy awakened, and the same opposition exerted. The conflict could happen in no other way, than by an attack from the larger States. We had neither the desire nor ability to injure them, and we now ask no favors, but their permission to enjoy, in peace and safety, the rights conceded to us by themselves, and secured by a solemn constitutional compact.

We have been told by a gentleman from Virginia, that it would be impolitic in us to rouse the great States. I shall, at present, take no further notice of this warning, given to us, no doubt, in the full exercise of benevolence, but to request the small States to preserve it in constant recollection. It may induce them not hastily to part with constitutional security. There are some other points of light, in which I wish to place the subject before us. The constitution is of recent date; it was formed by the mutual concessions of conflicting parties, and balanced with a view to the securing of all. Experience alone can test its utility, and time and practice discover its faults. It is a sound position, that you should never attempt an alteration in an instrument so complicated, and calculated to serve so many various and opposite interests, without being able, by the test of experiment, to discern clearly the necessity of alteration, and without a moral certainty, that the change shall not only remove an existing evil, but that it shall not produce any itself. The article in the constitution, establishing the mode of electing a chief magistrate, and which is now proposed to be altered, was undoubtedly one of the most difficult parts of the whole, at its formation. I am convinced, sir, that the public mind is not sufficiently impressed with the difficulty of adopting, not only an unexceptionable, but even a tolerable and practicable mode of electing a chief magistrate, possessing such important and extensive powers as are constitutionally vested in the President of the United States. An attempt to detail the number and magnitude of his powers, to this Senate, would be impertinent: but it must and will be acknowledged by all, that the President is vested with powers vastly extensive and important, and that he will bring with him into the government more or less of State politics and State prejudices; and these facts, to which may be added the probability that he will be taken from a large State, must have increased the difficulties of the convention, in fixing on a

mode of choice. How often have contests wars, and bloodshed, the destruction of confederacies, of liberty, and of vast portions of the human race, arisen from the election of chief magistrates? When we consider that the powers, vested in the President of this Union, are sufficiently important to excite the avarice and ambition of the human heart, its two most active principles, to gain possession of the office; when we consider the difference of sentiment, habit, and interest in this country; State pride and State jealousy, which could never be laid asleep; the difficulties of fixing upon a proper mode of election, must be, also, infinitely multiplied. And yet this article is now selected for alteration. All the amendments, which have been hitherto adopted, went to some general explanation, upon very general principles, not changing but rather expounding the constitution.

This, as I have before said, is taking up the most difficult and most important article in the constitution, both in relation to rights and principles. But it is said, that experience has shown us the necessity of an alteration in this article; that an evil has been found in practice to grow out of the constitutional provision, which calls imperiously for remedy.

Here Mr. Tracy referred to the late presidential election, and drew an inference, that the circumstances connected with it, afforded no ground of argument in favor of the proposed amendment.

I have said, that the article fixing the mode of electing a chief magistrate was, from its nature, attended with many difficulties. A more strict inquiry into the constitutional mode, and a comparison of it, in some other and more particular points, with the proposed alteration, will be useful in forming an opinion of their relative merits.

As the constitution stands, each elector is to write the names of two persons on a piece of paper, called a ballot. Either of the two persons, thus voted for, may be President, and the elector cannot know which: this affords the most powerful inducement to vote for two, both of whom are qualified for the very important office. For it is not only uncertain upon whom the choice will fall at first, but the one remaining will certainly be President, upon any contingency which shall remove or incapacitate the first. The convention seem to have selected a mode of proceeding the most simple, the least liable to accident, and the best calculated to insure the main object; that is, that both should be really worthy of the trust. If one candidate wishes to make interest with the electors, as each must vote for two, it will be impossible for bribery or intrigue to succeed; for without corrupting the whole, or certainly many more than half, he may be defeated by the other candidate on a ballot. This is, perhaps, the most

effectual bar to intrigue, that was ever contrived; for, unless all, or a great proportion of the electors are corrupted (an extreme case of depravity not probable in any country), intrigue can have no assurance of success. The danger and difficulty, which must always attend such an important election as that of chief magistrate of the United States, was meant to be avoided, by diminishing the chances of its frequent recurrence. So two persons are placed in condition to act as President in succession, to prevent both the evils of vacancy, and a recurrence of choice more frequently than once in four years. And it seems merely incidental to this second person, to be called Vice-President, and neither the first nor second description of electors can have any right to vote for him as such; indeed, he can have no existence till the first character is designated, and then seems to be discovered, not elected. The Senate, in case of an equal number of votes for two or more remaining persons, after the President is elected, are vested with authority to choose a Vice-President, for as such he is to preside over this body, and this body, therefore, seems to be the only constitutional organ to designate him. Both the other descriptions of electors have nothing to do with such a character or office; but are confined to act with a single reference to the character and office of President; and are trusted with no power to give any opinion of the character or qualifications of a Vice-President. And it is remarkable, that there are no appropriate qualifications made necessary by the constitution, for a Vice-President; but every qualification has reference to the President.

There is another important feature in this part of the constitution. It was known by the convention, that in this country, in common with all others where there is freedom of opinion and of speech, there would be parties. They likewise knew, that the intolerance of the major, or ruling sect and political party, was frequently exercised upon the minor party, and that the rights of the minority ought to be protected to them. As well, then, to secure the rights of the minority, as to check the intolerance of the majority, they placed the majority in jeopardy, if they should attempt at grasping all the benefits of a President and Vice-President within themselves, to the total exclusion of the minority. This very case which happened at the last election was contemplated, in which the majority attempted totally to exclude the minority from any participation. The language of the constitution to such majorities is, "take care that you aim not at too much, for if you do, it is put into the power of the minority to check you, and by a judicious disposition of their few votes, determine the choice of President." To avoid this event, the majority will probably be cautious in the exercise of power; and thus the rights, the proper weight and influence of a minority are secured against the conduct of the majority, which is certainly liable to be intolerant and oppressive.

In this respect, the spirit of the constitution is, political moderation. And it is clear to my mind, that the experience of the last election has taught a lesson to all majorities, which will in future completely secure them from again incurring a similar risk. I recollect well, that it was thought probable, when the electoral votes were given, that Mr. Burr would have a vote or two, in some of the Eastern States. If he had received but one, he would have been by an electoral choice, the constitutional President. If the majority in future have powers of recollection, they will undoubtedly avoid the evil, if it is one, which happened at the last election, with such unflinching certainty, that there will be no need of the remedy proposed by the amendment. But the majority say, if their votes are so scattered for one candidate as to avoid this danger, that another will be incurred; and that is, the minority will elect a Vice-President. The language of the constitution to them, is again, "that this was meant as a security for the minority against the majority." But the majority exclaim against both these provisions, as very unreasonable indeed. "what," say they, "are minorities to govern majorities?" The answer of the constitution is, "no, but their due weight and influence shall be secured to them, and the danger of your intolerance guarded against." For the security of small States and minorities, there is, in the constitution a mixture of the federative with the popular principles. And as it is well known, that, when popular majorities alone prevail, and exercise power uncontrolled by constitutional checks, the minorities, who generally possess their proportion of integrity and virtue, are overwhelmed, and liberty itself, by the same means, destroyed; so it is in kindness to both parties, to the country and to humanity, that these wholesome checks are constitutionally provided. Had the majority, or the great States been willing, fairly to have submitted to the constitutional checks in the last election, no evil could have happened. And it is remarkable that the constitution completely protects them, as long as they obey its precepts, in the creation of which they had an agency, and to which they have solemnly agreed. To prove that I am correct in these ideas, I not only refer to the constitution, but to the Secretary of State, Mr. Madison. In the Virginia Debates, Volume I., page 96, he says: "But on a candid examination of history, we shall find that turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions, which, in republics, have more frequently than any other cause, produced despotism. If we go over the whole history of ancient and modern republics, we shall find their destruction to have generally resulted from those causes. If we consider the peculiar situation of the United States, and what are the resources of that diversity of sentiments which pervades its inhabitants, we shall find great danger that the

same causes may terminate here, in the same fatal effects which they produced in those republics. This danger ought to be wisely guarded against: perhaps, in the progress of this discussion, it will appear that the only possible remedy for those evils, and means of preserving and protecting the principles of republicanism, will be found in that very system which is now exclaimed against as the parent of oppression."

Mr. President, it has often been said, by the discerning and judicious of this and other countries, that our constitution, for its brevity, its comprehensiveness, its perspicuity, and the political skill contained in it, was the best state paper extant. I believe all this, and even more is a tribute justly due to its merits; and I am persuaded that the article which fixes a mode for the choice of a chief magistrate, stands most prominent among its excellencies. Let us now, sir, examine and compare the merits of the amendment, with a special reference to this last view we have taken of the constitutional provision.

The amendment authorizes the electors to vote for a President, and for a Vice-President, by specific designation. Is ambition in your country? Here is a direct and inviting object for its operation. Is the integrity of your electors assailable? You place it here in the most encouraging attitude for an assault. A fear of detection, and a sense of shame, upon the exposure of an improper action, has been, perhaps, a better security against political errors or crimes, than all the moral virtues united, when the temptation has been attended with an impossibility of detection. An intrigue with an elector, can be carried on without much danger of detection; but when your election is carried into the House of Representatives, besides the ordinary weight of character in favor of the members of that House, a detection of an intrigue with a candidate is almost certain. It will be recollected, that, at the last election, two or three members held the choice perfectly in their own hands. If I mistake not, three gentlemen, that is, a member from New Jersey, a member from Vermont, and one from, either Maryland, Delaware or Tennessee, could have given a President to the United States. The particular gentlemen mentioned, were above suspicion of bribery; but in addition to this circumstance, if they had, in the contest, gone over, from improper motives, or under the influence of bribery, a detection was certain.

This will remain for ever, the criterion, as it respects the relative danger of intrigue and bribery, in the two modes of choice. And the amendment is avowedly intended to secure a choice by electors, and to prevent a resort to the House; because, says the gentleman from Virginia, Mr. Taylor, "if you permit the election to go into the House, there are small States, and minorities, and all the evils of a diet election:" meaning, that corruption must be the consequence. But he says, "let there be a divided election, by the electors, meeting by

States separately, and you lessen the tendency to corruption." This may look plausible in theory, but I think practice will show its fallacy. It may be better for the electors to meet by States, than for all to be together, but this can never prove that they are less liable to corruption than the House of Representatives; which is the only point in question.

The manner of electing the Vice-President, as proposed by the amendment, not only invites ambition to an unchecked operation; but exposes us to the selection of a less important, and more unfit person, than the constitutional provision. In addition to his importance in the government arising from his incidental succession to the chief magistracy, the Vice-President is, *ex officio*, president of the Senate, and gives a direct influence to the State from which he is chosen, of a third vote in this body, in all cases of equal division, which are usually the cases of the most importance. Besides, his influence as presiding officer, is perhaps, more than equal to the right of a vote. It becomes, therefore, peculiarly important to the small States, and to minorities, whose security rests in this body, not only, that their influence in the election of Vice-President should not be diminished; but that no measure be adopted, which may tend to bestow the office upon an unworthy character. By the proposed amendment, this character must necessarily become a sort of make-weight, and stepping-stone for the Presidency. As in recruiting for an army, a man, active and of a particular cast of character, but not very proper for a commander-in-chief, is employed to obtain recruits, and upon condition that he obtains a given number, is to be rewarded with a sergeant's warrant; so in this case, the man who can procure a given number of votes for President, will be encouraged to hope for the Vice-Presidency; and where will such characters be sought after? In Delaware or Rhode Island? No, sir, but in the great States; there the recruiting talents will be put in operation, because the number of recruits, or votes, will be sufficient to test his active and recruiting merits. And thus the office of Vice-President will be sent to market, with hardly a possible chance to meet an honest purchaser.

I have already remarked upon the alteration made by the Senate, in the resolution passed by the House of Representatives, changing the number five to three. But one addition made this morning, deserves attention; I mean that which authorizes the Vice-President to administer the government, in case neither the first nor the second constitutional electors effect a choice of President.\*

This is a new principle and its operation is

\* An amendment to the resolution had been proposed, which provided, that in the case the House of Representatives should not, within days, effect the choice of a President, in the manner prescribed, and a Vice-President shall be duly elected, the Vice-President should discharge the duties of President.

more uncertain, than that of any other part of the proposed amendment. Viewing it in one point of light, it may be thought to confer a new power upon the Senate; that of giving a President to the Union. And it is said, that this part will recompense the small States, who have the ascendancy in the Senate, for the injury inflicted by the other parts of the amendment. If it be true, that the last part restores all which the former parts have taken away from us, it is inconceivable, why any man can wish to pass a resolution, the parts of which thus mutually destroy each other. It is possible, that by the force of intrigue and faction, the electors may be induced to scatter their votes for both President and Vice-President, in such manner, as to present several candidates to the House for President and two or more to the Senate for Vice-President. In which case, the Senate might immediately choose or select a Vice-President. In this state of things, there is an opportunity afforded for an intrigue, of a very extensive and alarming nature. The Senate, I mean a majority of them, might wish that the man whom they had elected Vice-President, should administer the government, and if the House could be prevented from agreeing, their wishes would be gratified. The facility of preventing over that of producing a choice, is very obvious.

A bold address may be made to any member of the House, without wounding his pride, or offending his morality, to adhere to his candidate, and not change his vote so as to effect a choice. He can be told, that there is no danger of leaving the United States without a President, as there is one already chosen to his hand by the Senate; and this person may be more the object of his wishes, than any of the other candidates, his favorite excepted. In this process, the Senate may give a President to the United States. But if the probability of such a process and such an event is increased by the amendment of this morning, it cannot certainly greatly recommend it. For myself, I wish for no alteration in the constitution, not even if its operations were directly in favor of the small States, more especially if such a favor is to be derived through a sort of double conspiracy of intrigue; in the first place, to operate on the electors, and then on the House of Representatives. It seems to me, that the small States had better be contented to enjoy the rights now secured to them by the constitution, which they can honestly do, rather than submit to a deprivation of their rights, for the sake of dishonestly obtaining a restoration of them. We may charitably and safely conclude, that the majority do not intend, by this part of the amendment, to expose the country to such a scene of iniquity. And the uncertainty of its operations, alone, is, in my mind, a sufficient ground for rejection. However the operation of this part of the amendment may appear in theory as to other points, it seems to me, that in one point all must agree, and that is, when

the House of Representatives know that the United States will be left without an executive magistrate, in case they do not agree; this awful responsibility will speak in a voice too loud for the hardihood of party entirely to disregard. And may not I suggest, without giving offence, that the operation of this very responsibility has been proved, at least in some degree, in the proceedings of the last presidential election?

If this last-mentioned security be worth preserving, it follows, of course, that the part of the amendment alluded to ought not to pass.

There is another view of the constitution, which has a reference to the general subject before us; and that is, the caution exhibited with respect to the introduction of amendments. In an instrument so important, and containing many features new, if not to the world, at least to ourselves, although we might approve of its principles; yet experience might discover errors as to the mode devised for carrying those principles into effect. Hence it was the part of wisdom and caution to provide for such alterations in practice as would give the fairest operation to principles, without incurring the confusion and agitation incidental to a general convention. But lest the daring and restive spirit of innovation should injure or destroy, under the specious name of amendment, that same wisdom and caution have provided salutary checks.

"Two-thirds of both Houses of the Congress shall deem it necessary" to propose amendments; and three-fourths of the State legislatures shall ratify such amendments, before they acquire validity. I speak now, sir, of the mode which has always been, and probably will be put in practice to obtain amendments. The other constitutional mode is equally guarded as to numbers, but, as it has no relation to the subject now in debate, may be laid aside. "Two-thirds of both Houses" must, I think, on every fair principle of construction, mean two-thirds of all the members. The number of senators is thirty-four; two-thirds being twenty-three. And as there is no representation from New Jersey, the number of representatives is one hundred and thirty-six; two-thirds being ninety-one.

My impressions are, sir, that this amendment cannot constitutionally be proposed to the State legislatures, unless it is agreed to, in the two Houses, by those numbers, twenty-three and ninety-one, respectively. This is a constitutional point, which, I am told, has never been agitated, but is certainly worthy of attention. If the construction should prevail, that two-thirds of the members present at any time, might propose amendments, the consequence is, that twelve senators, being two-thirds of a quorum, and forty-eight representatives, being a similar two-thirds, might propose any and the most important amendments. I am aware, sir, that it may be said, such propositions are not final, they may yet be ratified or rejected by

the State legislatures. But the spirit of the constitution seems to require two-thirds of the nation, acting by its proper organs, to propose amendments; and that, in so interesting a subject as a constitutional alteration, a less number should have no authority.

The letter of the constitution will certainly justify this idea of its spirit. When two-thirds of the Senate are requisite to consent and advise to a treaty, the words are "two-thirds of the senators present." To convict on impeachment, "two-thirds of the members present." Yeas and nays are to be entered on the journal, "at the desire of one-fifth of those present." In the two first cases, it is requisite to act immediately, whether two-thirds of the whole are present or not; then we see the expressions are clear, "two-thirds" refers to the numbers present. Why so? Because, without these expressions, the reference would have been understood to be the whole number of members. In the last case, why add the word "present" to the one-fifth? Because, without that word, one-fifth of the whole would have been its meaning. In all other cases, when two-thirds are required, the spirit of the constitution certainly is, and the words seem to carry the meaning, "two-thirds" of the whole numbers. It is said, "that a majority of each House shall constitute a quorum to do business." House, in this case, must mean all the members. Two-thirds of both Houses must, on the same principles, mean two-thirds of all the members of both. There is, I acknowledge, some obscurity, in the constitutional use of the word House, when either of the two branches of Congress is described by it; but if the intention and sense, as well as words are attended to, I am forcibly led to believe, that two-thirds of all the members of both Houses are required to sanction propositions for amendments, and that this construction is most consistent with the wisdom and political skill of the convention. The construction for which I contend, is analogous to the caution manifest in other parts of the constitution. It was well known to the convention, that amendments, if recommended or proposed by Congress, would have an imposing influence with the State legislatures; and that, in no possible instance, could more evil arise from indigested measures, than in the case of amendments, owing to the impossibility of clearly foreseeing their operation and effects on the general constitutional system. It was made requisite, therefore, to wait for the uninfluenced movement of two-thirds of the popular and federative representatives of the nation. Whatever may be our opinion on the point now discussed, the State legislatures have a constitutional right to judge of it for themselves, and to determine whether a proposition for an amendment is presented to them, with the sanction required, and if, in their opinions, the requisite numbers have not agreed to the proposition, they will guard the constitution, by refusing to ratify such amendment. My honorable

friend from New Hampshire, Mr. Plumer, has done such ample justice to this part of the subject, as to place it out of the reach of my assistance and beyond the need of any.

I am convinced, Mr. President, that the amendment now under consideration could not, in the Senate, obtain a constitutional majority of two-thirds, or even a simple majority, were it not for the influence of instructions. Some gentlemen have ingeniously said, that until they gave this amendment the present particular examination, they had not contemplated the extent of its probable effects, and although they entertained doubts, yet they were induced by the instructions given them, to make the proposition to the legislatures, and let them decide for themselves.

Whatever may or can be said in favor of instructions generally, cannot be applicable to this case. For the purpose of obtaining amendments to the constitution, Congress can only propose, and the State legislatures ratify. The duties are appropriate and distinct, and the uninfluenced, independent act of both, requisite. The legislatures cannot ratify, till a proposal is made. This subject can be elucidated and enforced by familiar examples. The House of Representatives alone can originate a bill for raising revenue, but it cannot become a law without a concurrence of the Senate. Would not the advice and instruction of the Senate to the House, intimating our desire that they would originate and send to us for concurrence a revenue bill, be thought improper, indelicate, and even unconstitutional? The President and Senate can appoint certain officers, but they have distinct and appropriate agencies in the appointment. The President can nominate, but cannot appoint without the advice and consent of the Senate.

But the Senate cannot nominate, nor could their advice to the President, to make a nomination, be either binding or proper. The character of the several independent branches of our government, forming constitutional checks upon each other, cannot be exemplified more fully, than in the mode of producing amendments. And an interference of one independent body upon the appropriate and distinct duties of another, can, in no instance, have a more prejudicial effect. Can it be thought, then, either proper, or constitutional, for the State legislatures to assume the power of instructing to propose to them a measure, when the power of proposing is not only not given to them, but given exclusively to Congress? As well and with as much propriety might Congress make a law, attempting to bind the State legislatures to ratify; as the legislatures by instructions bind Congress to propose. In either case, the check, which, for obviously wise purposes, was introduced into the constitution, is totally destroyed. And we have not as much security against improper amendments, as we should have, if the power were exclusively vested in the State legislatures, and for

this obvious reason, that in this mode of operation the responsibility, for the adoption of an improper amendment, is divided and destroyed. Is the sentiment correct, sir, that we shall be justifiable in sending forth this proposition to be considered by the State legislatures, if we believe it ought not to be ratified? What would be thought of the Senate, if they should pass a bill, and send it to the House of Representatives for concurrence, the provisions of which they disliked entirely, and wished not to be established? And can any sound distinction be made between such a measure and the one now before us? In either case, the single act of the other body would be final; and in either case, the people at large would be safer to have but one body in existence, to legislate, or make amendments; for all our agency in both cases would only tend to deceive and mislead, and, in addition, to diminish, if not destroy, as has just been observed, the responsibility of the other body.

It has been said, sir, that the House of Representatives have twice given a sanction to this measure, and that their conduct, in this particular, adds weight to it; I wish to treat that honorable body with the highest respect; but I must deviate from the truth, were I to acknowledge that their conduct upon this amendment, has a tendency to convince me that they have a full understanding of the subject. Twice have they sent us a resolution, similar in its leading feature to that on your table, and made no provision that the person to be Vice-President should be qualified for the highly responsible office, either in age or citizenship. And for aught that they had guarded against, we might have had a man in the chief magistracy, from Morocco, a foreigner, who had not been in the country a month.

Mr. President, it was suggested, in a former part of the debate, by a gentleman from South Carolina, Mr. Butler, that the great States, or ruling party of the day, had brought forward this amendment, for the purpose of preventing the choice of a federal Vice-President at the next election. And we are now put beyond the power of doubt, that this is, at least, one motive, by the observations of several of the majority, but especially by those of the gentleman from Virginia. He informs us, and I appreciate his frankness, that if the friends of this measure do not seize the present opportunity to pass it, the opportunity will never recur. He tells us plainly, that a minor faction ought to be discouraged, that all hopes or prospect of rising into consequence, much more of rising into office, should be crushed, and that this amendment is to produce a part of these beneficial effects; which amendment he compares to the bill which was introduced into the British Parliament, to exclude a popish successor to the Crown, commonly called the exclusion bill. Have the minority, then, no right left but the right to be trampled upon by the majority? This is iden-

tically the conduct, which is mentioned in the quotation which I have had the honor to make from the Secretary of State: to which I ask leave to recur. "The majority, by trampling on the rights of the minority, have produced factions and commotions, which, in republics, have, more frequently than any other cause, produced despotism."

What avails it, then, that this country has triumphed over the invasion and violence of one oppressor, if they must now be victims to the violence of thousands? Political death is denounced now; what denunciation will follow? It would be a useless affectation in us, to pretend to close our eyes upon either the cause or consequences of this measure.

The spirit of party has risen so high, at the present day, that it dares to attempt, what in milder times would be beyond the reach of calculation. To this overwhelming torrent, every consideration must give way.

The gentleman is perfectly correct, in supposing that now is the only time to pass this resolution; there is a tide in the affairs of party most emphatically, and unless its height is taken, its acme improved, the shallows soon appear, and the present demon of party gives place to a successor. A hope is undoubtedly now indulged, that one great and dominant passion, will, like Aaron's rod, swallow up every other, and that the favorable moment can now be seized to crush the small States, and to obtain their own agency in the transaction. And when we recur to the history of former confederacies, and find the small States arrayed in conflict against each other, to fight, to suffer, and to die for the transient gratification of the great States; have we not some reason to fear the success of this measure?

In the Senate is the security of the small States; their feeble voice in the House of Representatives is lost in the potent magic of numbers and wealth. Never until now has the force of the small States, which was provided by the constitution, and lodged in this federative body, as a weapon of self-defence, been able to bear upon this question. And will the small States, instead of defending their own interest, their existence, sacrifice them to a gust of momentary passion—to the short-lived gratification of party prejudice?

This resolution, if circumstances shall unequivocally demand it, can pass at the next or any future session of Congress. But once passed, and its passage will operate like the grave; the sacrificed rights of the small States will be gone for ever. Is it possible, sir, that any small State can submit to be a satellite in the State system, and revolve in a secondary orbit around a great State—act in humble devotion to her will till her purposes are gratified, and then content herself to be thrown aside like a cast-off garment, an object of her own unceasing regret, and fit only for the hand of scorn to point its slow and moving finger at? Can the members of the Senate, who represent the



small States, quietly cross their hands and request the great States to bind them fast and to draw the ligature?

I am aware, sir, that I shall be accused of an attempt to excite the jealousy of the small States. Mr. President, I represent a small State; I feel the danger, and claim the constitutional right to sound the alarm. From the same altar on which the small States shall be immolated, will rise the smoke of sacrificed liberty: and despotism must be the dreadful successor.

It is the cause of my country and of humanity, which I plead. And when one vast overwhelming passion is in exercise, full well I know, sir, that no warning voice, no excitement but jealousy, has been found sufficiently active and energetic in its operation to dissolve

the wizard spell, and force mankind to listen to argument.

Jealousy, hateful in private life, has perhaps done more in the preservation of political rights than all the virtues united.

I have made the stand, sir, in the Senate, which I thought the importance of the subject demanded. If I fail here, there is hope of success with the State legislatures. If nothing can withstand the torrent there, I shall experience the satisfaction which is derived from a consciousness of having raised my feeble voice in defence of that constitution, which is not only the security of the small States, but the palladium of my country's rights; and shall console myself with the reflection that I have done my duty.

#### THE JUDICIARY SYSTEM.

Mr. Tracy delivered this speech, in the Senate of the United States, on the twelfth of January, 1802, on the following motion: "Resolved, that the act of Congress, passed on the thirteenth day of February, 1801, entitled an 'Act to provide for the more convenient organization of the courts of the United States,' ought to be repealed."\*

Feeble as I am, I have thought it my duty to offer my sentiments on this subject. Owing to severity of indisposition, I have not been in my place, nor have I heard any of the discussion. This circumstance will be my apology, if, in the remarks I shall make, repetitions shall occur on the one hand, and apparent inattention to arguments on the other.

Having been a member of this government during several years, and being impressed with the difficulties attending the formation of a judiciary system, I have thought it proper to give a concise history of legislative proceedings on this important subject. Permit me to say, sir, that the first institution of such a system must be an experiment. It is impossible to ascertain until tried, the effects of a system co-extensive with the vast territory of the United States, and which ought to be adapted to the different laws and habits of the different States.

Soon after the first law was enacted, as early as the year 1793, and I believe sooner, com-

plaints were made of the system of circuit courts. The Union then being divided into three circuits, and two of the six judges were obliged to attend each court, if one judge failed, all the business, of course, was continued to the next term. Judges complained of the distances they had to travel, and suitors and lawyers complained of delays. In 1793, if my memory is correct, the law passed allowing one judge to attend with the district judge in each district, with some other modifications, not important in the present view of the subject. If, by reason of distance, badness of roads, sickness, or any other accident, this one judge failed of attendance, or if he and the district judge differed on any point, a delay was occasioned. If the same judge attended the same circuit at the next term, another delay, and so on, till experience taught us that some alteration in the system was requisite. It will be recollected, that the judges had to travel over this extensive country twice in each year, and to encounter the extremes of both heat and cold. Of this they complained; but this was not all; the business was not done.

At several sessions of Congress, the subject of circuit courts was before them; committees were appointed in both Houses, and in more than one communication of the Executive at the commencement of sessions, a revision of the system was recommended. I cannot on memory, detail the exact particulars, or order of time; but in the speech made by the President at the opening of the session of 1799, the subject is stated as follows:

"To give due effect to the civil administration of government and to ensure a just execution of the laws, a revision and amendment of the judiciary system is indispensably necessary. In this extensive country it cannot but happen that numerous questions, respecting the inter-

\* The act of 1801, referred to in the above resolution, very essentially changed the judiciary system of the United States, from what it had been previous to that time. It provided for the establishment of several new tribunals, denominated Circuit Courts, the abolition of which was the principal object of the advocates of the resolution.—See *Journals of Congress, Jan., March, 1802.*



pretation of the laws, and the rights and duties of officers and citizens, must arise. On the one hand the laws should be executed, on the other individuals should be guarded from oppression; neither of these objects is sufficiently assured under the present organization of the judicial department. I, therefore, earnestly recommend the subject to your serious consideration."

Although this subject had been recommended before, and committees had contemplated a revision and alteration of the system, I do not remember that a bill had ever been presented to either House of Congress until 1799. In that session a bill was reported, similar in its features to the act which passed last session. It might have been acted upon in the House of Representatives; of this, however, I am not confident; but I recollect it was printed, and the members of both Houses had it before them, and at the last session, with some alterations and amendments, it was enacted into a law. I believe all parties wished for a revision and amendment of the system, in respect to circuit courts; the difference of opinion was principally this: some supposed an increase of the judges of the supreme court to such a number as would render the duties of the circuit practicable for them, and provide for the completion of business, would be the best amendment; the others thought the law, as it passed, was preferable.

I acknowledge, that in deliberating upon this subject, we always assumed the principle, that the establishment of courts was important to protect the rights of the people; we did not fear an army of judges, as has been hinted by the gentleman last up, Mr. Jackson. In this opinion we might be mistaken, but we were honest in our professions. Although some believed that more of the business of the United States might be confided to the State courts; yet it is not within my recollection, that the question was considered in any measure a party question. I am confident, that at the session of 1799, and for a long time before that, the friends of this law, which eventually passed last winter, could not, nor did not, contemplate any change of administration. A revision of the system was long a subject of deliberation; we believed an increase of circuit judges, to the number requisite to perform the duties, would be an inconvenient increase of the supreme court, and though it was desirable for the judges of the supreme court to see the people and be seen of them, yet the preference was given to the system now proposed to be repealed. We suppose it would be an evil to increase the number of judges of the supreme court to thirteen, fifteen, or seventeen. A court which is to act together, should not be numerous; on this subject all men have agreed; here may be danger of an "army of judges," as the gentleman says; for although in Great Britain the twelve judges are sometimes called to give an opinion, yet no man will feel equal confi-

dence in a tribunal of judges for the business of a court, consisting of many, as of few; from three to five, the good sense and experience of all nations has declared to be about the proper number, and we thought it conducive to the general good to establish tribunals in such manner as to carry justice to the door of every man.

In this modification of the system, the jurisdiction of the circuit court has been extended as it respects the sum in demand, of which they are to take cognizance, and as it respects the disputes which arise, concerning the title of lands; and exclusive jurisdiction is given of all crimes committed within fifty miles of their place of session. The intention was to ensure a prompt execution of justice, and experiment alone can test the wisdom of the plan.

I take it to be a sound rule, adopted by all wise and deliberate bodies, not to repeal an existing law until experiments shall have discovered errors, or unless there is a vice so apparent on the face of the law, as that justice shall require an immediate destruction of it. Has there been time to gain information by experiment? No man will pretend this as a justification of the repeal; for the little time the law has been in force, so far as I have obtained any knowledge upon the subject, it has gained credit.

Another maxim in legislation, I think, is correct, not to give up a law in existence, which is conversant about extensive and important concerns of the community, and about which there is a necessity of enacting some law, without seeing clearly what can be substituted for it, and that the substitute has manifest advantages. This resolution leads to no result, but a repeal. I have stated the errors of the former system of Circuit Courts, and if expense is an objection to the present system, as I have heard urged out of doors, the same, or nearly as much, must be incurred, if we increase the number of Judges of the Supreme Court, as to effect a reform in the Circuit Court. Why repeal this law, then, and leave us without any, or without any adequate to its purpose?

Is this system so very vicious, that it deserves nothing but abhorrence and destruction? It costs us a little more than thirty thousand dollars, and by it the number of circuit judges is increased to sixteen; and by it likewise is contemplated reducing the number of supreme judges to five, when it can constitutionally be done. Is the expense an object, when by that expense we extend the jurisdiction of a court over this vastly extensive, growing country, and carry law and protection to every man? This country is in a singular condition; a great tract of unsettled lands is peopling with rapidity, and numerous emigrations increase our population far beyond its natural increase; is it not of importance that courts should be located among them, early, to correct the restless spirit which is frequent in new and scattered settlements? And are not the emigrations

composed of such as require the prompt assistance of the law, to preserve among them regularity? Punishment to us, and to all good men, should be a strange work; but to prevent crimes, is the work of a God. I speak to gentlemen, who have many of them graced the judge's bench, and adorned the professional robe they have worn, and are therefore not obliged to be particular that I may be understood; a word to the wise will be sufficient. A judiciary, in a national point of view, is absolutely necessary, and an extension of it to every national purpose is equally necessary. To depend upon State Courts, not under obligations nor amenable to you, besides having as much business allotted to them by the respective States, as they can accomplish, and depending upon them, and not on us, for existence—will require only to be mentioned, to be exploded. Locating your judges in the various parts of the country, by them promulgating the national laws, which is well known has been a subject of great difficulty, and giving them daily opportunity of mixing with people, not well disposed to order and law, may prevent disorders and insurrections, and save millions of expense, which pecuniary saving will be the least of the important events arising from such a system.

But it will probably be said the courts have not business to employ them; and the documents received from the Executive will be produced in evidence. And it may further be said, the President has in his message recommended a repeal of this law. The words of the message are: "The judiciary system of the United States, and especially that portion of it lately erected, will of course present itself to the contemplation of Congress; and that they may be able to judge of the proportion which the institution bears to the business it has to perform, I have caused to be procured from the several States, and now lay before Congress, an exact statement of all the causes decided since the first establishment of the courts, and of those that were depending when additional courts and judges were brought in to their aid."

Is this a recommendation to repeal? Suppose, for argument's sake, it is. Let us look at this "exact" statement. In the recapitulation, 19th page of document 8, there appears to have been instituted 8,276 suits, and pending when this court went into operation 1,539. But on further inspection, it will be found, that Maryland is entirely omitted; this omission is unaccountable, since the means of knowledge were so near at hand; 119 causes undecided in Tennessee; 134 in North Carolina, and 331 in Virginia, are omitted; making in the whole an error of five or six hundred causes. In addition to this, the number of suits in New York are not stated correctly by the statement of the attorney when he made the return; and not one is carried out as pending in the recapitulation; and the return of Massachusetts is incorrect on its face; so that nothing more than

conjecture can be derived from this "exact" statement. The President is usually more correct, and how this peremptory language in the message comports with the document, every man can see for himself. I am not disposed to attribute intentional error to any man, much less to the Executive; but in point of use the statement amounts to nothing; we may just as well imagine without it as with it, how many suits were pending at the institution of the new courts.

But I acknowledge that the number of suits pending is not, in my mind, any criterion upon which a correct judgment may be formed of the utility or necessity of courts; or to say the most of it, it forms but one ground of judging, and that not a very conclusive one. In a country thinly settled, it is frequently as important to establish courts as in a more populous country; and as this government is situated it may be more so; and yet the number of suits will bear no proportion. Why did we establish courts in our territorial government but on this principle?

A number of courts, properly located, will keep the business of any country in such condition as but few suits will be instituted; and courts badly organized will discourage suitors, and there will be but few actions returned. From the number of suits alone, there can no sound judgment be formed.

But there is another objection to the repeal of the judiciary law, which in my mind is conclusive. I mean the letter and spirit of the constitution.

In the formation of every government in which the people have a share in its administration, some established and indisputable principles must be adopted. In our government, the formation of a legislative, executive, and judiciary power is one of the incontrovertible principles; and that each should be independent of the other, so far as human frailty will permit, is equally incontrovertible. Will it be expected that I shall quote Sidney, De Lolme, Montesquieu, and a host of elementary writers, to prove this assertion? There is, probably, no conflict of opinion upon this subject. When we look into our constitution of government, we shall find in every part of it, a close and undeviating attention to this principle. Our particular form is singular in its requirements, that full force and operation be given to this all important principle. Our powers are limited, many acts of sovereignty are prohibited to the national government, and retained by the States, and many restraints are imposed upon State sovereignty. If, either by accident or design, it should exceed its powers, there is the utmost necessity that some timely checks, equal to every exigency, should be interposed. The judiciary is established by the constitution for that valuable purpose.

In the British Government, the legislature is omnipotent to every legislative effect, and is a perpetual convention for almost every consti-

tutional purpose. Hence it is easy to discern the different part which must be assigned to the judiciary in the two kinds of government. In England the executive has the most extensive powers, the sword or the military force; the right of making war, and in effect the command of all the wealth of the nation, with an unqualified veto to every legislative act. It is, therefore, rational for that nation to preserve their judiciary completely independent of their sovereign. In the United States, the caution must be applied to the existing danger; the judiciary are to be a check on the executive, but most emphatically to the legislature of the Union, and those of the several States. What security is there to an individual, if the legislature of the Union or any particular State should pass a law, making any of his transactions criminal which took place anterior to the date of the law? None in the world but by an appeal to the judiciary of the United States, where he will obtain a decision that the law itself is unconstitutional and void, or by a resort to revolutionary principles and exciting a civil war. With a view to these principles, and knowing that the framers of our constitution were fully possessed of them, let us examine the instrument itself. Article Third, Section First: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." Are there words in the English language more explicit? Is there any condition annexed to the judges' tenure of office other than good behavior? Of whom shall your judges be independent? We are led to an erroneous decision on this, as well as many other governmental subjects, by constantly recurring to Great Britain. That their courts should be independent of their sovereign is an important object; he is the fountain of honor and power, and can do no wrong; our President, at least for several years past, has been considered as the fountain of dishonor and weakness; and if there was any maxim upon the subject, it was that he could do no right. Of course the great object of the independence of the judiciary must here have reference not only to our executive, but our legislature. The legislature with us is the fountain of power. No person will say that the judges of the supreme court can be removed unless by impeachment and conviction of misbehavior; but the judges of the inferior courts, as soon as ordained and established, are placed upon precisely the same grounds of independence with the judges of the supreme court. Congress may take their own time to ordain and establish, but the instant that that is done, all the rights of independence attach to them.

If this reasoning is correct, can you repeal a

law establishing an inferior court under the constitution? Will it be said, that although you cannot remove the judge from office, yet you can remove his office from him? Is murder prohibited, and may you shut a man up, and deprive him of sustenance till he dies, and this be not denominated murder? The danger in our government is, and always will be, that the legislative body will become restive, and perhaps unintentionally break down the barriers of our constitution. It is incidental to man, and a part of our imperfections to believe that power may be safely lodged in our hands. We have the wealth of the nation at command, and are invested with almost irresistible strength; the judiciary has neither force nor wealth to protect itself. That we can, with propriety, modify our judiciary system, so that we always leave the judges independent, is a correct and reasonable position; but if we can, by repealing a law, remove them, they are in the worst state of dependence.

I have exhausted myself, and I fear the patience of the Senate, and regret exceedingly that my indisposition prevented me from a better preparation upon this important question. I have attempted to show that the establishment of a judiciary system for this country is, and must be attended with difficulties; and that the legislature have taken such measures as to a majority of them seemed most reasonable, after much attention to the subject, to cure the evils of the old system, by the substitution of a new system.

And let it be remarked, that the law now under consideration, although it modified our courts, is strictly guarded against a violation of the principles I have here contended for. The Supreme Court is but to consist of five judges after the next vacancy shall happen; and the district judges of Tennessee and Kentucky are associated with a Circuit judge, to perform the duties of circuit judges; which duties it is well known they performed ever since the district courts were established; and in the clause which increases their salaries, they are styled the district judges; and all the alteration made in their circumstances, is an increase of duty and of salary. I have attempted to show the primary necessity of rendering the judiciary of this confederated government completely independent, not only of the executive, but especially so of the legislature.

And by adverting to the words of the instrument itself, I have attempted to show that the judiciary are secured, so far as words can do it, as well as from a circuitous removal, by repealing the law constituting the court of which they are judges, as by any direct removal.

I am strongly impressed with the magnitude of this subject; perhaps the whims of a sick man's fancy have too much impressed me to view it correctly; but, sir, I apprehend the repeal of this law will involve in it the total destruction of our constitution. It is supported by three independent pillars—the legislative,

executive, and judiciary; and if any rude hand should pluck either of them away, the beautiful fabric must tumble into ruins. The judiciary is the centre pillar, and a support to each by checking both; on the one side is the sword, on the other side is the wealth of the nation; and it has no inherent capacity to defend itself.

These very circumstances united may provoke an attack, and whichever power prevails so far as to invest in itself, directly or indirectly, the power of the judiciary, by rendering it dependent, it is the precise definition of tyranny, and must produce its effects. The Goths and Vandals destroyed not only the government of Rome, but the city itself; they were savages, and felt the loss of neither; but if it be possible there can be an intention, like the son of Manoah, with his strength without his godli-

ness, to tumble this fabric to the earth, let it be remembered it will crush, in one undistinguished ruin, its perpetrators, with those whom they may call their political enemies.

I most earnestly entreat gentlemen to pause and consider. I apprehend the repeal of this act will be the hand-writing on the wall, stamping *Mene Tekel* upon all we hold dear and valuable in our constitution. Let not the imputation of instability which is cast upon all popular bodies be verified by us, in adopting laws to-day and repealing them to-morrow, for no reason but that we have the power and will exercise it.

The constitution is an invaluable inheritance; if we make inroads upon it and destroy it, no matter with what intentions, it cannot be replaced; we shall never have another.

## HENRY LEE.

GENERAL HENRY LEE, a member of a family distinguished in the annals of America, was a native of Virginia, where he was born on the twenty-ninth of January, 1756. At the age of thirteen years he entered the college of New Jersey, at Princeton, and, continuing there the usual term, distinguished himself by a close and steady application to his studies, and a strict adherence to the collegiate rules. On graduating, late in September, 1773,\* he delivered an English oration on the *Liberal Arts*, and received the honors of the college. The following year was passed at his home, and while his father was engaged in negotiating treaties with the different Indian tribes, the management of the private concerns of the family was intrusted to him.

At this time the troubles existing between the ministry of Great Britain and the colonists were assuming a decided character; the importation of tea had already been prohibited in the several colonies, and the "good citizens" had been called on to discountenance all those unjust measures of the Crown "which ought to be opposed, as contrary to every principle of liberty, and which righteously incur the just indignation and resentment of every true American."

Animated by the exciting scenes which were being enacted around him, and in which so many of his kinsmen were engaged, young Lee relinquished "the soft scenes of tranquil life for the rough adventures of war," and, at the age of nineteen years, he entered the service of his country, as a captain of cavalry, in the Virginia line. In this situation he soon commanded the respect and attention of his countrymen, by his active enterprise and manly heroism.

In the autumn of 1777, Lee's company, with the rest of the cavalry raised by Virginia, were formed into one regiment, and united to the Continental army. From this time he rapidly acquired distinction as an able and gallant officer, and by the high state of discipline and efficiency he maintained in his company, soon won the confidence of the commander-in-chief, a confidence which continued through life.

An account of one of Captain Lee's earliest exploits, and which probably, in some measure, led to his preferment, is given by that officer, in his *Memoirs of the War in the Southern Department*. It is as follows:—After the success of the British at the Brandywine, the British general pursued his route across the Schuylkill, directing his course to Philadelphia. Contiguous to his route, lay some mills stored with flour for the use of the American army. Their destruction was deemed necessary by Washington, and his aide-de-camp, Lieutenant-colonel Hamilton, attended by Captain Lee, with a small party of his troop of horse, were despatched in front of the enemy with the order of execution. The mill, or mills, stood on the bank of the Schuylkill. Approaching, you descend a long hill, leading to a bridge over the mill-race. On the summit of this hill two videts were posted; and soon after the party reached the mills. Lieutenant-colonel Hamilton took possession of a flat-bottomed boat for the purpose of transporting himself and his comrades across the river, should the sudden approach of the enemy render such retreat necessary. In a little time this precaution manifested his sagacity: the fire

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\* An extended account of the commencement exercises was published in Rivington's New York Gazetteer, of October 14th, 1773.

of the videts announced the enemy's appearance. The dragoons were ordered instantly to embark. Of the small party, four, with the Lieutenant-colonel, jumped into the boat, the van of the enemy's horse in full view, pressing down the hill in pursuit of the two videts. Captain Lee, with the remaining two, took the decision to regain the bridge, rather than detain the boat. Hamilton was committed to the flood, struggling against a violent current, increased by recent rains; while Lee put his safety on the speed and soundness of his horse.

The attention of the enemy being engaged by Lee's push for the bridge, delayed the attack upon the boat for a few minutes, and thus afforded Hamilton a better chance of escape. The two videts preceded Lee as he reached the bridge; and himself, with the two dragoons, safely passed it, although the enemy's front section emptied their carbines and pistols at the distance of ten or twelve paces. Lee's apprehension for the safety of Hamilton continued to increase, as he heard volleys of carbines discharged upon the boat, which were returned by the guns singly and occasionally. He trembled for the probable issue, and as soon as the pursuit ended, which did not long continue, he despatched a dragoon to the commander-in-chief, describing with feelings of anxiety what had passed, and his sad presage. His letter was scarcely perused by Washington, before Hamilton himself appeared; and, ignorant of the contents of the paper in the general's hand, renewed his attention to the ill-boding separation, with the probability that his friend Lee had been cut off, inasmuch as instantly after he turned for the bridge, the British horse reached the mill, and commenced their operations upon the boat. Washington, with joy, relieved his fears, by giving to his aide-de-camp the captain's letter. Thus did fortune smile upon these two young soldiers, already united in friendship, which ceased only with life. Lieutenant-colonel Hamilton escaped unhurt, but two of his four dragoons, with one of the boatmen, were wounded.\*

At the battle of Germantown, Lee's company of cavalry was selected by General Washington as his body guard. In January, 1778, when occupying a small stone house, with a body of ten men, the rest of his command being absent on a foraging expedition, the building was surrounded by two hundred of the British cavalry, who attempted to take him prisoner, but were met with so spirited a resistance that they were compelled to retreat. Soon after this he was advanced to the rank of major, with the command of three companies of cavalry. While in this position he planned and executed the celebrated attack on the British post at Paulus Hook, opposite to the city of New York, their head-quarters. He surprised and took the garrison, under the eye of the British army and navy, and safely conducted his prisoners into the American lines, many miles distant from the post captured. There are few enterprises to be found on military record, equal in hazard or difficulty, or conducted with more consummate skill and daring courage. It was, too, accompanied without loss; filled the camp of the enemy with shame and astonishment, and shed an unfading lustre on the American arms.

In 1780, Lee was promoted to the rank of lieutenant-colonel commandant of a separate legionary corps, and was sent to the southern department of the United States, to join the army under General Greene, where he remained until the close of the war. The many brilliant achievements which he performed in that difficult and arduous war, under that celebrated and consummate commander, it is not necessary to enumerate; "they are so many illustrious monuments of American courage and prowess, which in all future ages will be the theme of historical praise—of grateful recollection by his countrymen, and of ardent imitation by every brave and patriotic man."

On the termination of the war, he returned to the peaceful walks of civil life. He was subsequently a member of the legislature of his native State, and in 1786, was chosen a delegate to the Continental Congress. Two years after, he served as a member of the convention for the ratification of the Federal Constitution, which instrument he supported. In 1792, he was elected Governor of Virginia, continuing in office three years. During his administration, in August, 1794, the celebrated Whiskey Insurrection, in Pennsylvania, had taken so serious a character, that an army was formed composed of volunteers from that State, and detachments of militia

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\* *Memoirs of the War in the Southern Department of the United States.* By Henry Lee. Edition, 1827, page 17

from New Jersey, Maryland, and Virginia. Governor Mifflin took command of the troops of his State. The Governor of New Jersey commanded the troops of that State, and those of Maryland and Virginia, as well as the others, were under the command of General (then Governor) Lee. When these troops had assembled at their respective places of encampment, General Washington visited them, and directed General Hamilton to accompany them to the west. The insurgents did not venture to meet this force, and the rebellion ceased without a conflict.\*

General Lee was chosen a representative in the Congress of the United States in year 1799, and was selected by that body to pronounce an oration in honor of the memory of Washington. He continued in Congress until the commencement of Mr. Jefferson's Presidency, when he retired altogether from public life.

In the summer of 1814, while General Lee was residing in Baltimore, he was concerned in a political riot, and suffered a severe assault, from the effects of which he never recovered. After passing some time in the West Indies for the benefit of his health, he returned to his native land, where he died on the twenty-fifth of March, 1818, at the residence of Mrs. Shaw, the daughter of General Greene, at Cumberland Island, near St. Mary's, Georgia.

He left behind him an extensive and valuable historical work, entitled, *Memoirs of the War in the Southern Department of the United States*, in which the difficulties and privations endured by the patriotic army employed in that quarter—their courage and enterprise, and the skill and talents of their faithful, active, and illustrious commander, General Greene, are displayed in never-fading colors. †

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#### EULOGY ON WASHINGTON.

This oration was prepared and delivered at the request of the Congress of the United States, by General Lee, at Philadelphia, on the twenty-sixth of December, 1799. ‡

In obedience to your will, I rise your humble organ, with the hope of executing a part of the system of public mourning which you have been pleased to adopt, commemorative of the death of the most illustrious and most beloved personage this country has ever produced; and which, while it transmits to posterity your sense of the awful event, faintly represents your knowledge of the consummate excellence you so cordially honor.

Desperate, indeed, is any attempt on earth to meet correspondently this dispensation of heaven; for, while with pious resignation we submit to the will of an all-gracious Providence, we can never cease lamenting, in our finite view of Omnipotent wisdom, the heart-rending privation for which our nation weeps. When the civilized world shakes to its centre;

when every moment gives birth to strange and momentous changes; when our peaceful quarter of the globe, exempt as it happily has been from any share in the slaughter of the human race, may yet be compelled to abandon her pacific policy, and to risk the doleful casualties of war; what limit is there to the extent of our loss? None within the reach of my words to express; none which your feelings will not disavow.

The founder of our federate republic—our bulwark in war, our guide in peace, is no more! O that this were but questionable! Hope, the comforter of the wretched, would pour into our agonizing hearts its balmy dew. But, alas! there is no hope for us; our WASHINGTON is removed for ever! Possessing the stoutest frame, and purest mind, he had passed nearly to his sixty-eighth year, in the enjoyment of high health, when, habituated by his care of us to neglect himself, a slight cold, disregarded, became inconvenient on Friday, oppressive on Saturday, and, defying every medical interposition, before the morning of Sunday, put an end to the best of men. An end did I say?—his fame survives! bounded only by the limits of the earth, and by the extent of the human mind. He survives in our hearts, in the growing knowledge of our children, in the affection of the good throughout the world: and when our monuments shall be done away; when nations now existing shall be no more; when even our young and far-spreading empire shall have perished, still will our WASHINGTON'S

\* Sullivan's Familiar Letters.

† National Intelligencer: Lee's Memoirs: and the Life of Richard Henry Lee, vol. 1.

‡ A Funeral Oration in honor of the memory of George Washington, late General of the Armies of the United States: prepared and delivered at the request of Congress, at the German Lutheran Church, Philadelphia, on Thursday, the 26th of December, by Major General Henry Lee, one of the Representatives from the State of Virginia.

glory unfaded shine, and die not, until love of virtue cease on earth, or earth itself sinks into chaos.

How, my fellow-citizens, shall I single to your grateful hearts his pre-eminent worth? Where shall I begin in opening to your view a character throughout sublime? Shall I speak of his warlike achievements, all springing from obedience to his country's will—all directed to his country's good?

Will you go with me to the banks of the Monongahela, to see your youthful WASHINGTON, supporting, in the dismal hour of Indian victory, the ill-fated Braddock, and saving, by his judgment and by his valor, the remains of a defeated army, pressed by the conquering savage foe; or, when oppressed America, nobly resolving to risk her all in defence of her violated rights, he was elevated by the unanimous voice of Congress to the command of her armies? Will you follow him to the high grounds of Boston, where, to an undisciplined, courageous, and virtuous yeomanry, his presence gave the stability of system, and infused the invincibility of love of country; or shall I carry you to the painful scenes of Long Island, York Island, and New Jersey, when, combating superior and gallant armies, aided by powerful fleets, and led by chiefs high in the roll of fame, he stood, the bulwark of our safety, undismayed by disaster, unchanged by change of fortune? Or will you view him in the precarious fields of Trenton, where deep gloom, unnerving every arm, reigned triumphant through our thinned, worn down, unaided ranks; himself unmoved? Dreadful was the night. It was about this time of winter, the storm raged, the Delaware rolling furiously with floating ice, forbade the approach of man. WASHINGTON, self-collected, viewed the tremendous scene; his country called; unappalled by surrounding dangers, he passed to the hostile shore; he fought; he conquered. The morning sun cheered the American world. Our country rose on the event; and her dauntless chief, pursuing his blow, completed, in the lawns of Princeton, what his vast soul had conceived on the shores of Delaware.

Thence to the strong grounds of Morristown, he led his small but gallant band; and through an eventful winter, by the high efforts of his genius, whose matchless force was measurable only by the growth of difficulties, he held in check formidable hostile legions, conducted by a chief, experienced in the art of war, and famed for his valor on the ever memorable heights of Abraham, where fell Wolfe, Montcalm, and since, our much lamented Montgomery, all covered with glory. In this fortunate interval, produced by his masterly conduct, our fathers, ourselves, animated by his resistless example, rallied around our country's standard, and continued to follow her beloved chief through the various and trying scenes to which the destinies of our Union led.

Who is there that has forgotten the vales of

Brandywine, the fields of Germantown, or the plains of Monmouth? Every where present, wants of every kind obstructing, numerous and valiant armies encountering, himself a host, he assuaged our sufferings, limited our privations, and upheld our tottering republic. Shall I display to you the spread of the fire of his soul, by rehearsing the praises of the hero of Saratoga, and his much loved compeer of the Carolinas? No; our WASHINGTON wears not borrowed glory. To Gates—to Greene, he gave without reserve the applause due to their eminent merit; and long may the chiefs of Saratoga, and of Eutaw, receive the grateful respect of a grateful people.

Moving in his own orbit, he imparted heat and light to his most distant satellites; and combining the physical and moral force of all within his sphere, with irresistible weight he took his course, commiserating folly, disdaining vice, dismaying treason, and invigorating despondency; until the auspicious hour arrived, when, united with the intrepid forces of a potent and magnanimous ally, he brought to submission the since conqueror of India; thus finishing his long career of military glory with a lustre corresponding to his great name, and in this, his last act of war, affixing the seal of fate to our nation's birth.

To the horrid din of battle, sweet peace succeeded; and our virtuous Chief, mindful only of the common good, in a moment tempting personal aggrandizement, hushed the discontents of growing sedition; and surrendering his power into the hands from which he had received it, converted his sword into a ploughshare, teaching an admiring world that to be truly great, you must be truly good.

Were I to stop here, the picture would be incomplete, and the task imposed unfinished. Great as was our WASHINGTON in war, and as much as did that greatness contribute to produce the American Republic, it is not in war alone his pre-eminence stands conspicuous. His various talents, combining all the capacities of a statesman, with those of a soldier, fitted him alike to guide the councils and the armies of our nation. Scarcely had he rested from his martial toils, while his invaluable parental advice was still sounding in our ears, when he, who had been our shield and our sword, was called forth to act a less splendid, but more important part.

Possessing a clear and penetrating mind, a strong and sound judgment, calmness and temper for deliberation, with invincible firmness and perseverance in resolutions maturely formed; drawing information from all; acting from himself, with incorruptible integrity and unvarying patriotism; his own superiority and the public confidence alike marked him as the man designed by heaven to lead in the great political as well as military events which have distinguished the era of his life.

The finger of an overruling Providence, pointing at WASHINGTON, was neither mistaken



nor unobserved; when, to realize the vast hopes to which our Revolution had given birth, a change of political system became indispensable.

How novel, how grand the spectacle! Independent States, stretched over an immense territory, and known only by common difficulty, clinging to their union as the rock of their safety, deciding by frank comparison of their relative condition, to rear on that rock, under the guidance of reason, a common government through whose commanding protection, liberty and order, with their long train of blessings, should be safe to themselves, and the sure inheritance of their posterity.

This arduous task devolved on citizens selected by the people, from knowledge of their wisdom and confidence in their virtue. In this august assembly of sages and of patriots, WASHINGTON of course was found; and as if acknowledged to be most wise where all were wise, with one voice he was declared their chief. How well he merited this rare distinction, how faithful were the labors of himself and his compatriots, the work of their hands and our union, strength and prosperity, the fruits of that work, best attest.

But to have essentially aided in presenting to his country this consummation of her hopes, neither satisfied the claims of his fellow-citizens on his talents, nor those duties which the possession of those talents imposed. Heaven had not infused into his mind such an uncommon share of its ethereal spirit to remain unemployed; nor bestowed on him his genius unaccompanied with the corresponding duty of devoting it to the common good. To have framed a constitution, was showing only, without realizing, the general happiness. This great work remained to be done; and America, steadfast in her preference, with one voice summoned her beloved WASHINGTON, unpractised as he was in the duties of civil administration, to execute this last act in the completion of the national felicity. Obedient to her call, he assumed the high office with that self-distrust peculiar to his innate modesty, the constant attendant of pre-eminent virtue. What was the burst of joy through our anxious land, on this exhilarating event, is known to us all. The aged, the young, the brave, the fair, rivalled each other in demonstrations of their gratitude; and this high-wrought, delightful scene, was heightened in its effect, by the singular contest between the zeal of the bestowers and the avoidance of the receiver of the honors bestowed. Commencing his administration, what heart is not charmed with the recollection of the pure and wise principles announced by himself, as the basis of his political life! He best understood the indissoluble union between virtue and happiness, between duty and advantage, between the genuine maxims of an honest and magnanimous policy and the solid rewards of public prosperity and individual felicity; watching, with an equal and compre-

hensive eye, over this great assemblage of communities and interests, he laid the foundations of our national policy in the unerring, immutable principles of morality, based on religion, exemplifying the pre-eminence of a free government, by all the attributes which win the affections of its citizens, or command the respect of the world.

"O fortunatos nimium, sua si bona norint!"

Leading through the complicated difficulties produced by previous obligations and conflicting interests, seconded by succeeding Houses of Congress, enlightened and patriotic, he surmounted all original obstruction, and brightened the path of our national felicity.

The presidential term expiring, his solicitude to exchange exaltation for humility, returned with a force increased with increase of age; and he had prepared his farewell address to his countrymen, proclaiming his intention, when the united interposition of all around him, enforced by the eventful prospects of the epoch, produced a further sacrifice of inclination to duty. The election of President followed, and Washington, by the unanimous vote of the nation, was called to resume the chief magistracy. What a wonderful fixture of confidence! Which attracts most our admiration, a people so correct, or a citizen combining an assemblage of talents forbidding rivalry, and stifling even envy itself? Such a nation ought to be happy, such a chief must be forever revered.

War, long menaced by the Indian tribes, now broke out; and the terrible conflict, deluging Europe with blood, began to shed its baneful influence over our happy land. To the first, outstretching his invincible arm, under the orders of the gallant Wayne, the American Eagle soared triumphant through distant forests. Peace followed victory; and the melioration of the condition of the enemy, followed peace. Godlike virtue, which uplifts even the subdued savage!

To the second he opposed himself. New and delicate was the conjuncture, and great was the stake. Soon did his penetrating mind discern and seize the only course, continuing to us all the felicity enjoyed. He issued his proclamation of neutrality. This index to his whole subsequent conduct, was sanctioned by the approbation of both Houses of Congress, and by the approving voice of the people.

To this sublime policy he inviolably adhered, unmoved by foreign intrusion, unshaken by domestic turbulence.

"Justum et tenacem propositi virum,  
Non civium ardor prava jubentium,  
Non vultus instantis tyranni,  
Mente quatiit solida."

Maintaining his pacific system at the expense of no duty, America, faithful to herself, and unstained in her honor, continued to enjoy the delights of peace, while afflicted Europe mourns in every quarter, under the accumulated mis-

ries of an unexampled war; miseries in which our happy country must have shared, had not our pre-eminent WASHINGTON been as firm in council, as he was brave in the field.

Pursuing steadfastly his course, he held safe the public happiness, preventing foreign war, and quelling internal discord, till the revolving period of a third election approached, when he executed his interrupted but inextinguishable desire of returning to the humble walks of private life.

The promulgation of his fixed resolution, stopped the anxious wishes of an affectionate people from adding a third unanimous testimonial of their unabated confidence in the man so long enthroned in their hearts. When before was affection like this exhibited on earth? Turn over the records of ancient Greece; review the annals of mighty Rome; examine the volumes of modern Europe; you search in vain. America and her WASHINGTON only afford the dignified exemplification.

The illustrious personage, called by the national voice in succession to the arduous office of guiding a free people, had new difficulties to encounter. The amicable effort of settling our difficulties with France, begun by WASHINGTON, and pursued by his successor in virtue as in station, proving abortive, America took measures of self-defence. No sooner was the public mind roused by a prospect of danger, than every eye was turned to the friend of all, though secluded from public view, and gray in public service. The virtuous veteran, following his plough, received the unexpected summons with mingled emotions of indignation at the unmerited ill-treatment of his country, and of a determination once more to risk his all in her defence.

The annunciation of these feelings, in his affecting letter to the President, accepting the command of the army, concludes his official conduct.

First in war, first in peace, and first in the hearts of his countrymen, he was second to none in the humble and endearing scenes of private life. Pious, just, humane, temperate and sincere; uniform, dignified, and commanding, his example was as edifying to all around him as were the effects of that example lasting.

To his equals he was condescending; to his inferiors kind; and to the dear object of his affections exemplarily tender. Correct throughout, vice shuddered in his presence, and virtue always felt his fostering hand; the purity of his private character gave effulgence to his public virtues.

His last scene comported with the whole tenor of his life: although in extreme pain, not a sigh, not a groan escaped him; and with undisturbed serenity he closed his wellspent life. Such was the man America has lost! Such was the man for whom our nation mourns!

Methinks I see his august image, and hear, falling from his venerable lips, these deep sinking words:

"Cease, sons of America, lamenting our separation: go on, and confirm by your wisdom the fruits of our joint counsels, joint efforts, and common dangers. Reverence religion; diffuse knowledge throughout your land; patronize the arts and sciences; let liberty and order be inseparable companions; control party spirit, the bane of free government; observe good faith to, and cultivate peace with all nations; shut up every avenue to foreign influence; contract rather than extend national connexion; rely on yourselves only; be American in thought and deed. Thus will you give immortality to that Union, which was the constant object of my terrestrial labors. Thus will you preserve, undisturbed to the latest posterity, the felicity of a people to me most dear: and thus will you supply (if my happiness is now aught to you) the only vacancy in the round of pure bliss high heaven bestows."





*George Morris*





## GOUVERNEUR MORRIS.

RICHARD MORRIS, the great-grandfather of Gouverneur, and the first of his ancestors who emigrated to America, left England in the time of Cromwell, and settled in the West Indies, from whence he removed to New York, as early as the year 1670. Here he became possessed of an estate, containing more than three thousand acres of land, situated about ten miles from the city, and near the town of Harlem. Subsequently this domain was invested with manorial privileges, and received the name of Morrisania. In 1672 Richard Morris, and Sarah his wife, died, leaving a son called Lewis, about six months old, entirely in the hands of strangers, who were appointed by the government to take care of him.\* After the surrender of New York to the English, by the peace of 1674, his uncle, Captain Lewis Morris,† emigrated from the island of Barbadoes to America, and, settling at Morrisania, took him under his care, and finally made him heir to his fortune.

The youth of Lewis Morris, the nephew, was wild and frivolous. Smith, the colonial historian of New York, records an incident of his early career. "Hugh Copperthwait, a Quaker zealot, was young Morris's preceptor; the pupil taking advantage of his enthusiasm, hid himself in a hollow tree, and calling to him, ordered him to preach the gospel among the Mohawks. The credulous Quaker took it for a miraculous call, and was upon the point of setting out, when the cheat was discovered."

Endued with strong passions, young Morris gave frequent offence to his uncle, and, on one of those occasions, through fear of his resentment, "strolled away into Virginia, and thence to Jamaica, in the West Indies, where, to support himself, he set up for a scrivener." Some time after, tired of a life of dissipation and dependence, he returned to his uncle's roof, where he was received with joy and kindness. Possessed of solid natural powers and ambitious of preferment, he soon entered upon public life, in which he afterward exerted the greatest influence. He was one of the Council of the Province of New Jersey, and, in 1692, a judge of the Supreme Court

\* History of New York, by William Dunlap, vol. 1, page 272.

† The Morris family were originally of Welsh extraction. It was represented in 1635 by three brothers, Lewis, William, and Richard Morris. Lewis, who inherited the paternal estate of Tintern, raised a troop of horse in support of the Parliament, for which Charles the First confiscated his estates in Monmouthshire. In return for his losses, Oliver Cromwell subsequently indemnified him. At the attack upon Chepstow Castle, which was defended by Sir Nicholas Kemish, the king's general, Lewis Morris was the second in command. After an obstinate resistance the garrison was reduced, by cutting off the supply of water which ran through the estate of Pearcefield, then owned by Colonel Morris's son-in-law, John Walters, and setting fire to the castle. From this circumstance, the family assumed as their crest a castle in flames, with the following motto: "Tandem vincitur"—*at length he is conquered!* In 1654 he was despatched by Cromwell to the Spanish West Indies, with orders to make himself master of those seas. In this undertaking he was aided by his nephew, Captain John Morris, who had been long settled on the Island of Barbadoes.

While in this service, Captain Lewis Morris purchased a large estate in that island. When the Protector sent forces to attack Hispaniola, under Admirals Perin and Venables, he forwarded a vacant regiment and a colonel's commission to him, with the instructions that the forces were to land as directed by Colonel Morris. The failure of the expedition is said to have been owing, in a great measure, to a non-compliance with his directions. In the attack upon the Island of Jamaica, Lewis was second in command. On the restoration of King Charles the Second, Colonel Morris deemed it prudent not to return to England, where his family had played so bold a part. In 1668 he, with others, purchased the Island of St. Lucia of Amiwatta Baba, chief proprietor of the Carribee Islands, and in 1674 he emigrated to America.—*Bolton's History of Westchester County*, vol. 2, page 285.

there. Subsequently, for several years, he was a member of the assembly of that colony, and became its first governor, on its establishment as a separate province from New York. He also occupied the office of Chief Justice of New York. Shortly after his return from the West Indies, he was married to a Miss Graham,\* by whom he had twelve children, four sons and eight daughters. His two eldest sons, Lewis and Robert Hunter, became distinguished in public service.

Lewis, the father of Gouverneur Morris, the subject of the present sketch, resided on the family estate at Morrisania, and at an early age was a member of the New York Legislature. During the latter years of his life he was judge of Vice-Admiralty of New York, having jurisdiction also over all maritime affairs in Connecticut and New Jersey. He had eight children, of whom four were sons. Gouverneur was the youngest by a second marriage, and was born at Morrisania, on the thirty-first of January, 1752. At an early age he was placed in the family of M. Tetar, at New Rochelle, where he acquired a thorough knowledge of the French language, which, in after life, he wrote and spoke with nearly as much fluency and correctness as his native tongue.† After due preparation he entered King's, now Columbia College, where he graduated on the seventeenth of May, 1768. In the exercises of the commencement, he pronounced an oration on *Wit and Beauty*, in which he "acquitted himself with credit, and won the applause of his auditory." On leaving college he was presented with a silver medal, by the literary society connected with the college.‡

Having resolved to devote himself to the profession of the law, he commenced a course of study under the direction of William Smith, at that time one of the most eminent lawyers, and subsequently chief justice of the province of New York.§ In May, 1771, he received his second degree, and, in accordance with the custom then prevailing in the higher educational institutions of the country, delivered another oration. His subject at this time was *Love*. In that effort he treated of the objects and uses of love; of love as a religious sentiment, of benevolence and patriotism, of parental, filial, and connubial love, and traced the consequences of that all-pervading principle on the order of nature and condition of men. Of the love of country, he eloquently spoke. "There is some secret principle within us," he said, "some innate tenderness for that spot where we first drew our breath, first saw the light, the scene of our infant toys, some gentle effusion of divinity congenial with the soul, which enforces it far beyond the power of reason. This is a universal principle of patriotism confined by no bounds. It rules in all countries and in all nations. The sons of tyranny acknowledge it; the meanest slave has through this, an affection for his country. What then must be his love, who has tasted liberty at the fountain, who lives under a constitution dispensing the joys of freedom wherever it prevails, who possesses the sacred rights of a British subject; rights torn from the heart of tyranny, nourished with the best blood of his ancestors, and transmitted to him on the point of their swords! A Briton's love of country is fixed on the solid basis of freedom. Liberty! Nurse of heroes! Parent of worth! Best blessing of society! Long continue to smile upon this happy soil. Grant that my countrymen may feel the fulness of thy influence, that they may nobly advance under the shadow of thy wings in the pursuit of true glory, rise virtuously superior to the ills of fortune, and attain to that perfection, in attempting to acquire which, the Romans failed. May they ever be loyal, may they ever be free." ||

In the winter of 1769, a project for raising money by issuing bills of credit, was brought before the Assembly of New York. As this money was to pay the debts of the colony, it was popular with the people; but some of "the sensible men of the province," were opposed to the scheme, seeing no absolute relief in it, and an increase of difficulties at the end. At this time, young Morris entered upon the discussion of the question. He wrote anonymously against the project, and deprecated "the evil of a paper currency, as no other than a mischievous pretence

\* The History of the Province of New York, from the first discovery to the year 1732, by William Smith. Edition 1751.

† Life of Gouverneur Morris, by Jared Sparks, vol. 1, page 4.

‡ Holt's New York Journal; or the General Advertiser, of May 26th, 1768.

§ See notice of Judge Smith, at page 83, ante.

|| New York Gazette and Weekly Mercury, of May 27th. 1771. Life of Gouverneur Morris, vol. 1, page 12.



for putting off a day of payment, which must come at some time, and which ought to be met promptly by substantial funds collected from the resources of the province."

He commenced the practice of law, as an attorney, in October, 1771, and soon gave proofs of his extensive powers and extraordinary eloquence. In 1775, he was chosen a member of the Provincial Congress of New York, in which body he attracted attention by a report and speech on the mode of emission of a paper currency by the Continental Congress. In the fall of 1777, he was appointed a delegate to the General Congress, then in session at Yorktown, Pennsylvania; Philadelphia being in the hands of the British. A short time after his arrival at the Congress, he was appointed on a committee to investigate the state of the American army, then at Valley Forge, enduring unparalleled sufferings, from the effects of exposure, want of clothing and of food, and to report such measures as should be deemed necessary for its relief. Here the committee remained three months, during which time they prepared a new plan for the army, and, about the middle of April, 1778, returned to Yorktown.

Mr. Morris resumed his congressional labors with zeal, and was of great service in advancing measures for the better support and efficiency of the American forces. He was, at an early day, placed on several committees, that required constant attention and great exertion. Here also he commenced a correspondence with General Washington, which continued, with slight interruptions, while Mr. Morris was in Congress: a correspondence which evinces the mutual regard and confidence which existed between those eminent men at that time, and which continued unabated until the close of their lives.

In 1780, being no longer in a public position, Mr. Morris established himself in Philadelphia, and resumed the practice of his profession. In the early portion of that year, he wrote a series of papers on finance, which were published in the *Pennsylvania Packet*, over the signature of *An American*. Early in the month of May, 1780, he was thrown from his carriage, and injured to such an extent as to render the amputation of his left leg necessary. During the operation, he maintained great cheerfulness and elasticity of spirits, even while suffering intense pain. The day following the accident, a friend called to see him, who thought it his duty to offer as much consolation as he could, on an event so melancholy. He enlarged upon the good effects which such a trial would produce on his character and moral temperament, and the diminished inducements it would leave for seeking the pleasures and dissipations of life, into which young men are too apt to be led. "My good sir," replied Mr. Morris, "you argue the matter so handsomely, and point out so clearly the advantages of being without legs, that I am almost tempted to part with the other." On another similar occasion, he remarked, "O, sir, the loss is much less than you imagine; I shall doubtless be a *steadier* man with one leg than with two."\* A plain wooden leg was substituted for his loss, "and he soon acquired such a facility in its use, that it gave him little trouble, either in walking or in the other movements of the body."

In July, 1781, Mr. Morris was appointed assistant to Robert Morris, the superintendent of the finances of the United States, and remained in that position, closely devoting himself to its duties, during the space of three years. After the war he resigned, and again entered upon the practice of the law, at the same time continuing his connection with Robert Morris in private commercial enterprises. On the death of his mother, in 1786, he became possessed of the estate at Morrisania, by purchase, but he did not take up his residence there for several years. In 1787, he was a member of the Federal Convention from the State of Pennsylvania, and continued in that body during the whole of its deliberations, with the exception of a few days which were devoted to the arrangement of his private affairs. His services at this time can best be estimated from the following portion of a letter from James Madison, of the date, April 8th, 1831: "It may be justly said, that he was an able, an eloquent, and an active member.

\* \* The *finish* given to the style and arrangement of the constitution fairly belongs to the pen of Mr. Morris; the task having, probably, been handed over to him by the chairman of the committee, himself a highly respectable member, and with the ready concurrence of the others. A better choice could not have been made, as the performance of the task proved. It is true

that the state of the materials, consisting of a reported draft in detail, and subsequent resolutions accurately penned, and falling easily into their proper places, was a good preparation for the symmetry and phraseology of the instrument, but there was sufficient room for the talents and taste stamped by the author on the face of it."\*

On the eighteenth of December, 1788, Mr. Morris embarked for France, and early in February of the next year, arrived at Paris. His duties at this time were altogether of a commercial nature. Among the various incidents of this portion of his life are the following, recorded by Tuckerman, in his faithful and classic sketch of Mr. Morris:—"When abroad he tried several very artistic substitutes for his lost member; but, naturally impatient of deception, even in costume, he continued to use a stump attached to the fractured leg, and managed to accommodate his locomotion to this inconvenience without in the least impairing the dignity of his movements. Indeed, it served him an excellent purpose on one occasion, for the cry of 'Aristocrat!' being raised against him in the streets of Paris, for appearing in his carriage, when no such vehicles were allowed by the mob, he was surrounded by a bloodthirsty crowd, who threatened his life; but he coolly thrust his wooden leg out of the window, and cried out, 'An aristocrat? Yes; who lost his limb in the cause of American liberty!' The reaction was instantaneous; he was not only allowed to proceed, but vehemently cheered on his way."†

Early in 1791, President Washington appointed Mr. Morris a private agent to settle with the English government the unaccomplished articles of the treaty of peace; and in the following year he was delegated minister to the Court of France. He continued in this office until the fall of 1794, when he was succeeded by Mr. Monroe. The several subsequent years which he passed in Europe, were spent in travelling, and in the arrangement of his business relations.

In 1799, the year after his return to America, he was chosen to the Senate of the United States, and in May, 1800, he joined that body at Philadelphia. Here he became celebrated as one of the most influential and zealous of the federal party. His speeches on the judiciary and the Mississippi question are elaborate, and evince the best characteristics of senatorial eloquence.‡ At the close of his term, in 1803, he retired to his estate at Morrisania, where he passed the remainder of his life.

During the winter of 1809, he married Miss Anne Cary Randolph, a native of Virginia, distinguished by birth, accomplishments in mind, and person; with whom he passed the "evening of his day" in continued satisfaction and happiness.

After a short illness, he died on the sixth of November, 1816. From the nature of his disease, he was aware that his hours were numbered. On the morning of his death he inquired of a near relative, what kind of day it was. "A beautiful day," answered his nephew. "The air is soft, the sky cloudless, the water like crystal; you hear every ripple, and even the plash of the steamboat wheels on the river; it is a beautiful day." The dying man seemed to take in this description with that zest for nature, which accorded with the poetic instinct of his character. Like Webster, his mind reverted to Gray's Elegy: he looked at the kind relative and repeated his last words, "A beautiful day; yes, but

'—— who, to dumb forgetfulness a prey,  
This pleasing, anxious being e'er resigned,  
Left the warm precincts of the cheerful day,  
Nor cast one longing, lingering look behind?' "§

\* Life of Gouverneur Morris, by Jared Sparks, vol. 1, page 284.

† Biographical Essays by Henry T. Tuckerman, page 424.

‡ Among the literary productions of Mr. Morris, were published, *Observations on the American Revolution*, in 1779; *Address against the Abolition of the Bank of North America*, in 1785; Eulogies on Washington, Hamilton, and George Clinton; An Oration before the New York Historical Society, in 1812; another on the *Restoration of the Bourbons in France*, in 1814; and an *Inaugural Discourse*, as president of the New York Historical Society, September 4th, 1816. His life, with selections from his correspondence, was published by Jared Sparks, LL.D., in three volumes, 8vo., 1832.

§ Comparison of Webster and Morris, in the speech of Doctor John W. Francis, at the seventy-second anniversary of the birthday of Daniel Webster, January 18th, 1854.

## SPEECH ON THE JUDICIARY.

Mr. Morris delivered this speech in the Senate of the United States, on the fourteenth of January, 1802, on the motion, "*Resolved*, That the act of Congress, passed on the thirteenth day of February, 1801, entitled, 'An act to provide for the more convenient organization of the Courts of the United States,' ought to be repealed."\*

MR. PRESIDENT: I had fostered the hope that some gentleman, who thinks with me, would have taken upon himself the task of replying to the observations made yesterday, and this morning, in favor of the motion on your table. But since no gentleman has gone so fully into the subject as it seems to require, I am compelled to request your attention.

We were told, yesterday, by the honorable member from Virginia, that our objections were calculated for the bystanders, and made with a view to produce effect upon the people at large. I know not for whom the charge is intended. I certainly recollect no such observations. As I was personally charged with making a play upon words, it may have been intended for me. But surely, sir, it will be recollected that I declined that paltry game, and declared that I considered the verbal criticism, which had been relied on, as irrelevant. If I can recollect what I said, from recollecting well what I thought, and meant to say, sure I am, that I uttered nothing in the style of an appeal to the people. I hope no member of this House has so poor a sense of its dignity as to make such an appeal. As to myself, it is now near thirty years since I was called into public office. During that period, I have frequently been the servant of the people, always their friend; but at no one moment of my life their flatterer, and God forbid that I ever should be. When the honorable gentleman considers the course we have taken, he must see that the observation he has thus pointed, can light on no object. I trust that it did not flow from the consciousness of his own intentions. He, I hope, had no view of this sort. If he had, he was much, very much mistaken. Had he looked round upon those who honor us with their attendance, he would have seen that the splendid flashes of his wit excited no approbatory smile. The countenances of those by whom we were surrounded, presented a different spectacle. They were impressed with the dignity of this House; they perceived in it the dignity of the American people, and felt, with high and manly sentiment, their own participation.

We have been told, sir, by the honorable

gentleman from Virginia, that there is no independent part of this government; that in popular governments the force of every department, as well as the government itself, must depend upon popular opinion. The honorable member from North Carolina has informed us, that there is no check for the overbearing powers of the legislature but public opinion; and he has been pleased to notice a sentiment I had uttered—a sentiment which not only fell from my lips, but which flowed from my heart. It has, however, been misunderstood and misapplied. After reminding the House of the dangers to which popular governments are exposed, from the influence of designing demagogues upon popular passion, I took the liberty to say, that we, the Senate of the United States, are assembled here to save the people from their most dangerous enemy, to save them from themselves; to guard them against the baneful effects of their own precipitation, their passion, their misguided zeal. It is for these purposes that all our constitutional checks are devised. If this be not the language of the constitution, the constitution is all nonsense. For why are the senators chosen by communities, and the representatives directly by the people? Why are the one chosen for a longer term than the other? Why give one branch of the legislature a negative upon the acts of the other? Why give the President a right to arrest the proceedings of both, till two-thirds of each should concur? Why all these multiplied precautions, unless to check and control that impetuous spirit, that headlong torrent of opinion, which has swept away every popular government that ever existed?

With the most respectful attention, I heard the declaration of the gentleman from Virginia, of his own sentiment. "Whatever," said he, "may be my opinion of the constitution, I hold myself bound to respect it." He disdained, sir, to profess an attachment he did not feel, and I accept his candor as a pledge for the performance of his duty. But he will admit this necessary inference from that frank confession, that although he will struggle against his inclination and support the constitution, even to the last moment, yet, when in spite of all his efforts it shall fall, he will rejoice in its destruction. Far different are my feelings. It is possible that we are both prejudiced, and that in taking the ground, on which we respectively stand, our judgments are influenced by the sentiments which glow in our hearts. I, sir, wish to support this constitution because I love it; and I love it because I consider it as the bond of our union; because in my soul I believe, that on it depends our harmony and our peace; that without it, we should soon be plunged in all the horrors of civil war; that this country would be deluged with the blood of its inhabitants,

\* See note at page 442, ante.

and a brother's hand raised against the bosom of a brother.

After these preliminary remarks, I hope I shall be indulged while I consider the subject in reference to the two points which have been taken, the expediency and the constitutionality of the repeal.

In considering the expediency, I hope I shall be pardoned for asking your attention to some parts of the constitution, which have not yet been dwelt upon, and which tend to elucidate this part of our inquiry. I agree fully with the gentleman, that every section, every sentence, and every word of the constitution, ought to be deliberately weighed and examined; nay, I am content to go along with him, and give its due value and importance to every stop and comma. In the beginning, we find a declaration of the motives which induced the American people to bind themselves by this compact. And in the foreground of that declaration, we find these objects specified; "to form a more perfect union, to establish justice, and to insure domestic tranquillity." But how are these objects effected? The people intended to establish justice. What provision have they made to fulfil that intention? After pointing out the courts which should be established, the second section of the third article informs us, "the judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign states, citizens or subjects.

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

Thus then we find that the judicial power shall extend to a great variety of cases, but that the Supreme Court shall have only appellate jurisdiction in all admiralty and maritime causes, in all controversies between the United States and private citizens, between citizens of different States, between citizens of the same State claiming lands under different States, and between a citizen of the United States and foreign states, citizens or subjects. The honorable gentleman from Kentucky, who made the motion on your table, has told us that the constitution, in its judiciary provisions, contemplated only those cases which could not be

tried in the State courts. But he will, I hope, pardon me when I contend that the constitution did not merely contemplate, but did by express words reserve to the national tribunals a right to decide, and did secure to the citizens of America a right to demand their decision, in many cases evidently cognizable in the State courts. And what are these cases? They are those, in respect to which it is by the constitution presumed, that the State courts would not always make a cool and calm investigation, a fair and just decision. To form, therefore, a more perfect union, and to insure domestic tranquillity, the constitution has said there shall be courts of the Union to try causes, by the wrongful decision of which, the Union might be endangered or domestic tranquillity be disturbed. And what courts? Look again at the cases designated. The Supreme Court has no original jurisdiction. The constitution has said that the judicial powers shall be vested in the Supreme and inferior courts. It has declared that the judicial power, so vested, shall extend to the cases mentioned, and that the Supreme Court shall not have original jurisdiction in those cases. Evidently, therefore, it has declared, that they shall in the first instance be tried by inferior courts, with appeal to the Supreme Court. This, therefore, amounts to a declaration, that the inferior courts shall exist; since, without them, the citizen is deprived of those rights for which he stipulated, or rather, those rights verbally granted would be actually withheld; and that great security of our union, that necessary guard of our tranquillity, be completely paralyzed, if not destroyed. In declaring, then, that these tribunals shall exist, it equally declares, that the Congress shall ordain and establish them. I say they shall; this is the evident intention, if not the express words, of the constitution. The convention in framing, the American people in adopting that compact, did not, could not presume, that the Congress would omit to do what they were thus bound to do. They could not presume, that the legislature would hesitate one moment, in establishing the organs necessary to carry into effect those wholesome, those important provisions.

The honorable member from Virginia has given us a history of the judicial system, and, in the course of it, has told us, that the judges of the Supreme Court knew, when they accepted their offices, the duties they had to perform, and the salaries they were to receive. He thence infers, that if again called on to do the same duties, they have no right to complain. Agreed—but that is not the question between us. Admitting that they have made a hard bargain, and that we may hold them to a strict performance, is it wise to exact their compliance to the injury of our constituents? We are urged to go back to the old system; but let us first examine the effects of that system. The judges of the Supreme Court rode the circuits, and two of them, with the assistance of a district judge

held circuit courts and tried causes. As a supreme court, they have in most cases only an appellate jurisdiction. In the first instance, therefore, they tried a cause, sitting as an inferior court, and then, on appeal, tried it over again, as a supreme court. Thus then the appeal was from the sentence of the judges to the judges themselves. But say, that to avoid this impropriety, you will incapacitate the two judges who sat on the circuit from sitting in the supreme court to review their own decrees. Strike them off; and suppose either the same or a contrary decision to have been made on another circuit, by two of their brethren, in a similar case: for the same reason you strike them off, and then you have no court left. Is this wise? Is it safe? You place yourselves in the situation where your citizens must be deprived of the advantage given to them of a court of appeals, or else run the greatest risk that the decision of the first court will carry with it that of the other.

The same honorable member has given us a history of the law passed the last session, which he wishes now to repeal. That history is accurate, at least in one important part of it. I believe that all amendments were rejected, pertinaciously rejected; and I acknowledge that I joined heartily in that rejection. It was for the clearest reason on earth. We all perfectly understood, that to amend the bill was to destroy it; that if ever it got back to the other House, it would perish. Those, therefore, who approved of the general provisions of that bill, were determined to adopt it. We sought the practicable good, and would not, in pursuit of unattainable perfection, sacrifice that good to the pride of opinion. We took the bill, therefore, with its imperfections, convinced, that when it was once passed into a law, it might be easily amended.

We are now told, that this procedure was improper; nay, that it was indecent; that public opinion had declared itself against us; that a majority, holding different opinions, was already chosen to the other House; and that a similar majority was expected for that in which we sit. Mr. President, are we then to understand, that opposition to the majority in the two Houses of Congress is improper, is indecent? If so, what are we to think of those gentlemen, who, not only with proper and decent, but with laudable motives, for such is their claim, so long, so perseveringly, so pertinaciously opposed that voice of the people, which had so repeatedly, and for so many years, declared itself against them, through the organ of their representatives? Was this indecent in them? If not, how could it be improper for us to seize the only moment which was left for the then majority to do what they deemed a necessary act? Let me again refer to those imperious demands of the constitution, which called on us to establish inferior courts. Let me remind gentlemen of their assertion on this floor, that centuries might elapse before any

judicial system could be established with general consent. And then let me ask, being thus impressed with the sense of the duty and the difficulty of performing that arduous task, was it not wise to seize the auspicious moment?

Among the many stigmas affixed to this law, we have been told, that the President, in selecting men to fill the offices which it created, made vacancies and filled them from the floor of this House; and that but for the influence of this circumstance, a majority in favor of it could not have been found. Let us examine this suggestion. It is grounded on a supposition of corrupt influence, derived from a hope founded on two remote and successive contingencies. First, the vacancy might or might not exist; for it depended as well on the acceptance of another as on the President's grant; and secondly, the President might or might not fill it with a member of this House. Yet on this vague conjecture, on this unstable ground, it is inferred, that men in high confidence violated their duty. It is hard to determine the influence of self-interest on the heart of man. I shall not, therefore, make the attempt. In the present case, it is possible that the imputation may be just, but I hope not, I believe not. At any rate, gentlemen will agree with me, that the calculation is uncertain, and the conjecture vague.

But let it now, for argument's sake, be admitted, saving always the reputation of honorable men, who are not here to defend themselves—let it, I say, for argument's sake, be admitted, that the gentlemen alluded to acted under the influence of improper motives. What then? Is a law that has received the varied assent required by the constitution, and is clothed with all the needful formalities, thereby invalidated? Can you impair its force by impeaching the motives of any member who voted for it? Does it follow, that a law is bad because all those who concurred in it cannot give good reasons for their votes? Is it not before us? Must we not judge of it by its intrinsic merit? Is it a fair argument, addressed to our understanding, to say, we must repeal a law, even a good one, if the enacting of it may have been effected, in any degree, by improper motives? Or, is the judgment of this House so feeble, that it may not be trusted?

Gentlemen tell us, however, that the law is materially defective, nay, that it is unconstitutional. What follows? Gentlemen bid us repeal it. But is this just reasoning? If the law be only defective, why not amend? And if unconstitutional, why repeal? In this case, no repeal can be necessary; the law is in itself void; it is a mere dead letter.

To show that it is unconstitutional, a particular clause is pointed out, and an inference is made, as in the case of goods, where, because there is one contraband article on board, the whole cargo is forfeited. Admit, for a moment, that the part alluded to were unconstitutional, this would in no wise affect the remain-

der. That part would be void, or if you think proper, you can repeal that part.

Let us, however, examine the clause objected to on the ground of the constitution. It is said, that by this law the district judges, in Tennessee and Kentucky, are removed from office by making them circuit judges. And again, that you have by law appointed two new offices, those of circuit judges, and filled them by law, instead of pursuing the modes of appointment prescribed by the constitution. To prove all this, the gentleman from Virginia did us the favor to read those parts of the law which he condemns, and if I can trust to my memory, it is clear, from what he read, that the law does not remove these district judges, neither does it appoint them to the office of circuit judges. It does, indeed, put down the district courts; but is so far from destroying the offices of district judge, that it declares, the persons filling those offices shall perform the duty of holding the circuit courts. And so far is it from appointing circuit judges, that it declares, the circuit courts shall be held by the district judges. But gentlemen contend, that to discontinue the district courts, was in effect to remove the district judge. This, sir, is so far from being a just inference from the law, that the direct contrary follows as a necessary result; for it is on the principle, that these judges continue in office after their courts are discontinued, that the new duty of holding courts is assigned to them. But gentlemen say, this doctrine militates with the principles we contend for. Surely not. It must be recollected, sir, that we have repeatedly admitted the right of the legislature to change, alter, modify and amend the judiciary system, so as best to promote the interest of the people. We only contend, that you shall not exceed or contravene the authority by which you act. But, say gentlemen, you forced this new office on the district judges, and this is in effect a new appointment. I answer, that the question can only arise on the refusal of those judges to act. But is it unconstitutional to assign new duties to officers already existing? I fear, that if this construction be adopted, our labors will speedily end; for we shall be so shackled, that we cannot move. What is the practice? Do we not every day call upon particular officers to perform duties not previously assigned to or required of them? And must the executive, in every such case, make a new appointment?

But as a further reason to restore, by repealing this law, the old system, an honorable member from North Carolina has told us, the judges of the Supreme Court should attend in the States, to acquire a competent knowledge of local institutions, and for this purpose should continue to ride the circuits. I believe there is great use in sending young men to travel; it tends to enlarge their views, and gives them more liberal ideas than they might otherwise possess. Nay, if they reside long enough in foreign countries, they may become acquainted

with the manners of the people, and acquire some knowledge of their civil institutions. But I am not quite convinced, that riding rapidly from one end of this country to the other, is the best way to study law. I am inclined to believe, that knowledge may be more conveniently acquired in the closet than in the high road. It is moreover to be presumed, that the first magistrate would, in selecting persons to fill these offices, take the best characters from the different parts of the country, who already possess the needful acquirements. But admitting that the President should not duly exercise, in this respect, his discretionary powers, and admitting that the ideas of the gentleman are correct, how wretched must be our condition! These, our judges, when called on to exercise their functions, would but begin to learn their trade, and that too at a period of life when the intellectual powers with no great facility can acquire new ideas. We must, therefore, have a double set of judges. One set of apprentice-judges, to ride circuits and learn; the other set of master-judges, to hold courts and decide controversies.

We are told, sir, that the repeal asked for is important, in that it may establish a precedent, for that it is not merely a question on the propriety of disbanding a corps of sixteen rank and file; but that provision may hereafter be made, not for sixteen, but for sixteen hundred, or sixteen thousand judges, and that it may become necessary to turn them to the right-about. Mr. President, I will not, I cannot presume, that any such provision will ever be made, and therefore I cannot conceive any such necessity; I will not suppose, for I cannot suppose, that any party or faction will ever do any thing so wild, so extravagant. But I will ask, how does this strange supposition consist with the doctrine of gentlemen, that public opinion is a sufficient check on the legislature, and a sufficient safeguard to the people? Put the case to its consequences, and what becomes of the check? Will gentlemen say, it is to be found in the force of this wise precedent? Is this to control succeeding rulers, in their wild, their mad career? But how? Is the creation of judicial officers the only thing committed to their discretion? Have they not, according to the doctrine contended for, our all at their disposal, with no other check than public opinion, which, according to the supposition, will not prevent them from committing the greatest follies and absurdities? Take then all the gentleman's ideas, and compare them together, it will result, that here is an inestimable treasure put into the hands of drunkards, madmen and fools.

But away with all these derogatory suppositions. The legislature may be trusted. Our government is a system of salutary checks: one legislative branch is a check on the other. And should the violence of party spirit bear both of them away, the President, an officer high in honor, high in the public confidence, charged

with weighty concerns, responsible to his own reputation, and to the world, stands ready to arrest their too impetuous course. This is our system. It makes no mad appeal to every mob in the country. It appeals to the sober sense of men selected from their fellow-citizens for their talents, for their virtue; of men advanced in life, and of matured judgment. It appeals to their understanding, to their integrity, to their honor, to their love of fame, to their sense of shame. If all these checks should prove insufficient, and alas! such is the condition of human nature, that I fear they will not always be sufficient, the constitution has given us one more: it has given us an independent judiciary. We have been told that the executive authority carries your laws into execution. But let us not be the dupes of sound. The executive magistrate commands, indeed, your fleets and armies; and duties, imposts, excises, and other taxes are collected, and all expenditures are made by officers whom he has appointed. So far, indeed, he executes your laws. But these, his acts, apply not often to individual concerns. In those cases, so important to the peace and happiness of society, the execution of your laws is confided to your judges; and therefore are they rendered independent. Before, then, you violate that independence—pause. There are state sovereignties, as well as the sovereignty of the general government. There are cases, too many cases, in which the interest of one is not considered as the interest of the other. Should these conflict, if the judiciary be gone, the question is no longer of law, but of force. This is a state of things which no honest and wise man can view without horror.

Suppose, in the omnipotence of your legislative authority, you trench upon the rights of your fellow-citizens, by passing an unconstitutional law: if the judiciary department preserve its vigor, it will stop you short: instead of a resort to arms, there will be a happier appeal to argument. Suppose a case still more impressive. The President is at the head of your armies. Let one of his generals, flushed with victory, and proud in command, presume to trample on the rights of your most insignificant citizen: indignant of the wrong, he will demand the protection of your tribunals, and safe in the shadow of their wings, will laugh his oppressor to scorn.

Having now, I believe, examined all the arguments adduced to show the expediency of this motion—and which, fairly sifted, reduce themselves at last to these two things: restore the ancient system, and save the additional expense—before I close what I have to say on this ground, I hope I shall be pardoned for saying one or two words about the expense. I hope, also, that, notwithstanding the epithets which may be applied to my arithmetic, I shall be pardoned for using that which I learned at school. It may have deceived me when it taught me that two and two make four: but though it should now be branded with oppro-

rious terms, I must still believe that two and two do still make four. Gentlemen of newer theories, and of higher attainments, while they smile at my inferiority, must bear with my infirmities, and take me as I am.

In all this great system of saving, in all this ostentatious economy, this rage of reform, how happens it that the eagle eye has not yet been turned to the mint? That no one piercing glance has been able to behold the expenditures of that department? I am far from wishing to overturn it. Though it be not of great necessity, nor even of substantial importance; though it be but a splendid trapping of your government; yet, as it may, by impressing on your current coin the emblems of your sovereignty, have some tendency to encourage a national spirit, and to foster the national pride, I am willing to contribute my share for its support. Yes, sir, I would foster the national pride. I cannot indeed approve of national vanity, nor feed it with vile adulation. But I would gladly cherish the lofty sentiments of national pride. I would wish my countrymen to feel like Romans, to be as proud as Englishmen; and, going still farther, I would wish them to veil their pride in the well-bred modesty of French politeness. But can this establishment, the mere decoration of your political edifice, can it be compared with the massy columns on which rest your peace and safety? Shall the striking of a few halfpence be put into a parallel with the distribution of justice? I find, sir, from the estimates on your table, that the salaries of the officers of the mint amount to ten thousand, six hundred dollars, and that the expenses are estimated at ten thousand, nine hundred; making twenty-one thousand, five hundred dollars.

I find that the actual expenditures of the last year, exclusive of salaries, amounted to twenty-five thousand, one hundred and fifty-four dollars; add the salaries, ten thousand, six hundred dollars, we have a total of thirty-five thousand, seven hundred and fifty-four dollars; a sum which exceeds the salary of these sixteen judges.

I find further, that during the last year, they have coined cents and half cents to the amount of ten thousand, four hundred and seventy-three dollars and twenty-nine cents. Thus their copper coinage falls a little short of what it costs us for their salaries. We have, however, from this establishment, about a million of cents; one to each family in America; a little emblematical medal, to be hung over their chimney pieces; and this is all their compensation for all that expense. Yet not a word has been said about the mint; while the judges, whose services are so much greater, and of so much more importance to the community, are to be struck off at a blow, in order to save an expense which, compared with the object, is pitiful. What conclusion, then, are we to draw from this predilection?

I will not pretend to assign to gentlemen the motives by which they may be influenced; but

if I should permit myself to make the inquiry, the style of many observations, and more especially the manner, the warmth, the irritability, which have been exhibited on this occasion, would lead to a solution of the problem. I had the honor, sir, when I addressed you the other day, to observe, that I believed the universe could not afford a spectacle more sublime than the view of a powerful state kneeling at the altar of justice, and sacrificing there her passion and her pride: that I once fostered the hope of beholding that spectacle of magnanimity in America. And now what a world of figures has the gentleman from Virginia formed on his misapprehension of that remark. I never expressed any thing like exultation at the idea of a state ignominiously dragged in triumph at the heels of your judges. But permit me to say, the gentleman's exquisite sensibility on that subject, his alarm and apprehension, all show his strong attachment to state authority. Far be it from me, however, to charge the gentleman with improper motives. I know that his emotions arise from one of those imperfections in our nature, which we cannot remedy. They are excited by causes which have naturally made him hostile to this constitution, though his duty compels him reluctantly to support it. I hope, however, that those gentlemen who entertain different sentiments, and who are less irritable on the score of state dignity, will think it essential to preserve a constitution, without which, the independent existence of the States themselves will be but of short duration.

This, sir, leads me to the second object I had proposed. I shall therefore pray your indulgence, while I consider how far this measure is constitutional. I have not been able to discover the expediency, but will now, for argument's sake, admit it; and here I cannot but express my deep regret for the situation of an honorable member from North Carolina. Tied fast as he is by his instructions, arguments, however forcible, can never be effectual. I ought therefore to wish, for his sake, that his mind may not be convinced by any thing I shall say; for hard indeed would be his condition, to be bound by the contrariant obligations of an order and an oath. I cannot, however, but express my profound respect for the talents of those who gave him his instructions, and who, sitting at a distance, without hearing the arguments, could better understand the subject than their senator on this floor, after full discussion.

The honorable member from Virginia has repeated the distinction, before taken, between the supreme and the inferior tribunals; he has insisted on the distinction between the words *shall* and *may*; has inferred from that distinction, that the judges of the inferior courts are subjects of legislative discretion; and has contended that the word *may* includes all power respecting the subject to which it is applied, consequently to raise up and to put down, to create and to destroy. I must entreat your patience, sir, while I go more into this subject

than I ever supposed would be necessary. By the article, so often quoted, it is declared "that the judicial power of the United States *shall* be vested in one Supreme Court, and in such inferior courts as the Congress *may* from time to time establish." I beg leave to recall your attention to what I have already said of these inferior courts: that the original jurisdiction of various subjects being given exclusively to them, it became the bounden duty of Congress to establish such courts. I will not repeat the argument already used on that subject. But I will ask those who urge the distinction between the Supreme Court and the inferior tribunals, whether a law was not previously necessary before the Supreme Court could be organized? They reply that the constitution says there shall be a Supreme Court, and therefore the Congress are commanded to organize it, while the rest is left to their discretion. This, sir, is not the fact. The constitution says the judicial power shall be vested in one Supreme Court, and in inferior courts. The legislature can therefore only organize one Supreme Court, but they may establish as many inferior courts as they shall think proper. The designation made of them by the constitution is, such inferior courts as the Congress may from time to time ordain and establish. But why, say gentlemen, fix precisely one Supreme Court, and leave the rest to legislative discretion? The answer is simple: it results from the nature of things, from the existent and probable state of our country. There was no difficulty in deciding that one and only one Supreme Court would be proper or necessary, to which should lie appeals from inferior tribunals. Not so as to these. The United States were advancing in rapid progression. Their population of three millions was soon to become five, then ten, afterwards twenty millions. This was well known, as far as the future can become an object of human comprehension. In this increase of numbers, with a still greater increase of wealth, with the extension of our commerce and the progress of the arts, it was evident, that although a great many tribunals would become necessary, it was impossible to determine either on the precise number, or the most convenient form. The Convention did not pretend to this prescience; but had they possessed it, would it have been proper to have established then all the tribunals necessary for all future times? Would it have been wise to have planted courts among the Chickasaws, the Choctaws, the Cherokees, the Tuscaroras, and God knows how many more, because at some future day the regions over which they roam might be cultivated by polished men? Was it not proper, wise, and necessary, to leave in the discretion of Congress the number and the kind of courts which they might find it proper to establish for the purpose designated by the constitution? This simple statement of facts—facts of public notoriety—is alone a sufficient comment on and explication of the word on which gentlemen have so much



relied. The convention in framing, the people in adopting this compact, say the judicial power shall extend to many cases, the original cognizance whereof shall be by the inferior courts; but it is neither necessary, nor even possible, now to determine their number or their form: that essential power, therefore, shall vest in such inferior courts as the Congress may, from time to time, in the progression of time and according to the indication of circumstances, establish: not provide, or determine, but establish. Not a mere temporary provision, but an establishment. If, after this, it had said in general terms, that judges should hold their offices during good behavior, could a doubt have existed on the interpretation of this act, under all its attending circumstances, that the judges of the inferior courts were intended, as well as those of the Supreme Court? But did the framers of the constitution stop there? Is there then nothing more? Did they risk on these grammatical niceties the fate of America? Did they rest here the most important branch of our government? Little important, indeed, as to foreign danger; but infinitely valuable to our domestic peace and to personal protection against the oppression of our rulers. No; lest a doubt should be raised, they have carefully connected the judges of both courts in the same sentence; they have said, "the judges both of the supreme and inferior courts," thus coupling them inseparably together. You may cut the bands, but you can never untie them. With salutary caution they devised this clause, to arrest the overbearing temper which they knew belonged to legislative bodies. They do not say the judges simply, but the judges of the supreme and inferior courts shall hold their offices during good behavior. They say, therefore, to the legislature, you may judge of the propriety, the utility, the necessity of organizing these courts; but when established, you have done your duty. Anticipating the course of passion in future times, they say to the legislature, you shall not disgrace yourselves by exhibiting the indecent spectacle of judges established by one legislature removed by another; we will save you also from yourselves; we say these judges shall hold their offices; and surely, sir, to pretend that they can hold their office after the office is destroyed, is contemptible.

The framers of this constitution had seen much, read much, and deeply reflected. They knew by experience the violence of popular bodies, and let it be remembered, that since that day many of the States, taught by experience, have found it necessary to change their forms of government to avoid the effects of that violence. The convention contemplated the very act you now attempt. They knew also the jealousy and the power of the States; and they established for your and for their protection this most important department. I beg gentlemen to hear and remember what I say: it is this department alone, and it is the independence of this department, which can save

you from civil war. Yes, sir, adopt the language of gentlemen, say with them, by the act to which you are urged, "if we cannot remove the judges, we can destroy them." Establish thus the dependence of the judiciary department; who will resort to them for protection against you? Who will confide in, who will be bound by their decrees? Are we then to resort to the ultimate reason of kings? Are our arguments to fly from the mouths of our cannon?

We are told, that we may violate our constitution, because similar constitutions have been violated elsewhere. Two States have been cited to that effect, Maryland and Virginia. The honorable gentleman from Virginia tells us, that, when this happened in the State he belongs to, no complaint was made by the judges. I will not inquire into that fact, although I have the protest of the judges now lying before me: judges eminent for their talents, renowned for their learning, respectable for their virtue. I will not inquire what constitutions have been violated. I will not ask either when or where this dangerous practice began, or has been followed; I will admit the fact. What does it prove? Does it prove, that because they have violated, we also may violate? Does it not prove directly the contrary? Is it not the strongest reason on earth for preserving the independence of our tribunals? If it be true, that they have, with strong hand, seized their courts, and bent them to their will, ought we not to give suitors a fair chance for justice in our courts, or must the suffering citizen be deprived of all protection?

The gentleman from Virginia has called our attention to certain cases which he considers as forming necessary exceptions to the principles for which we contend. Permit me to say, that necessity is a hard law, and frequently proves too much; and let the gentleman recollect, that arguments, which prove too much, prove nothing. He has instanced a case where it may be proper to appoint commissioners, for a limited time, to settle some particular description of controversies. Undoubtedly it is always in the power of Congress to form a board of commissioners for particular purposes. He asks, are these inferior courts, and must they also exist for ever? I answer, that the nature of their offices must depend on the law by which they are created; if called to exercise the judicial functions designated by the constitution, they must have an existence conformable to its injunctions.

Again, he has instanced the Mississippi Territory, claimed by and which may be surrendered to the State of Georgia; and a part of the Union, which may be conquered by a foreign enemy. And he asks triumphantly, are our inferior courts to remain after our jurisdiction is gone? This case rests upon a principle so simple, that I am surprised the honorable member did not perceive the answer in the very moment when he made the objection. Is it

by our act that a country is taken from us by a foreign enemy? Is it by our consent that our jurisdiction is lost? I had the honor, in speaking the other day, expressly, and for the most obvious reasons, to except the case of conquest. As well might we contend for the government of a town swallowed up by an earthquake.

Mr. Mason explained: he had supposed the case of territory conquered, and afterwards ceded to the conqueror, or some other territory ceded in lieu of it.

The case is precisely the same: until after the peace the conquest is not complete. Every body knows, that until the cession by treaty, the original owner has the postliminar right to a territory taken from him. Beyond all question, where Congress are compelled to cede the territory, the judges can no longer exist, unless the new sovereign confer the office. Over such territory, the authority of the constitution ceases, and of course the rights which it confers.

It is said, the judicial institution is intended for the benefit of the people, and not of the judge; and it is complained of, that in speaking of the office, we say it is his office. Undoubtedly the institution is for the benefit of the people. But the question remains, How will it be rendered most beneficial? Is it by making the judge independent; by making it his office, or is it by placing him in a state of abject dependence, so that the office shall be his to-day and belong to another to-morrow? Let the gentleman hear the words of the constitution: it speaks of their offices; consequently, as applied to a single judge, of his office, to be exercised by him for the benefit of the people of America, to which exercise his independence is as necessary as his office.

The gentleman from Virginia has, on this occasion, likened the judge to a bridge, and to various other objects; but I hope for his pardon, if, while I admire the lofty flights of his eloquence, I abstain from noticing observations which I conceive to be utterly irrelevant.

The same honorable member has not only given us his history of the Supreme Court, but has told us of the manner in which they do business, and expressed his fears that, having little else to do, they would do mischief. We are not competent, sir, to examine, nor ought we to prejudge, their conduct. I am persuaded they will do their duty, and presume they will have the decency to believe that we do our duty. In so far as they may be busied with the great mischief of checking the legislative or executive departments in any wanton invasion of our rights, I shall rejoice in that mischief. I hope, indeed, they will not be so busied, because I hope we shall give them no cause. But I also hope they will keep an eagle eye upon us, lest we should. It was partly for this purpose they were established, and I trust, that when properly called on, they will dare

to act. I know this doctrine is unpleasant; I know it is more popular to appeal to public opinion; that equivocal, transient being, which exists nowhere and every where. But if ever the occasion calls for it, I trust that the Supreme Court will not neglect doing the great mischief of saving this constitution, which can be done much better by their deliberations, than by resorting to what are called revolutionary measures.

The honorable member from North Carolina, sore prest by the delicate situation in which he is placed, thinks he has discovered a new argument in favor of the vote which he is instructed to give. As far as I can enter into his ideas, and trace their progress, he seems to have assumed the position which was to be proved, and then searched through the constitution, not to discover whether the legislature have the right contended for, but whether, admitting them to possess it, there may not be something which might not comport with that idea. I shall state the honorable member's argument as I understand it, and if mistaken, pray to be corrected. He read to us that clause which relates to impeachment, and comparing it with that which fixes the tenure of judicial office, observed that this clause must relate solely to a removal by the executive power, whose right to remove, though not, indeed, any where mentioned in the constitution, has been admitted in a practice founded on legislative construction.

That, as the tenure of the office is during good behavior, and as the clause respecting impeachment does not specify misbehavior, there is evidently a cause of removal, which cannot be reached by impeachment, and of course the executive not being permitted to remove, the right must necessarily devolve on the legislature. Is this the honorable member's argument? If it be, the reply is very simple. Misbehavior is not a term known in our law; the idea is expressed by the word misdemeanor; which word is in the clause quoted respecting impeachments. Taking, therefore, the two together, and speaking plain old English, the constitution says: "The judges shall hold their offices so long as they shall demean themselves well; but if they shall misdemeanor, if they shall, on impeachment, be convicted of misdemeanor, they shall be removed." Thus, sir, the honorable member will find that the one clause is just as broad as the other. He will see, therefore, that the legislature can assume no right from the deficiency of either, and will find that this clause, which he relied on, goes, if rightly understood, to the confirmation of our doctrine.

Is there a member of this House, who can lay his hand on his heart, and say, that consistently with the plain words of our constitution, we have a right to repeal this law? I believe not. And if we undertake to construe this constitution to our purposes, and say that public opinion is to be our judge, there is an end to all constitutions. To what will not this dangerous

doctrine lead? Should it to-day be the popular wish to destroy the first magistrate, you can destroy him: and should he to-morrow be able to conciliate to himself the will of the people, and lead them to wish for your destruction, it is easily effected. Adopt this principle, and the whim of the moment will not only be the law, but the constitution of our country.

The gentleman from Virginia has mentioned a great nation brought to the feet of one of her servants. But why is she in that situation? Is it not because popular opinion was called on to decide every thing, until those who wore bayonets decided for all the rest? Our situation is peculiar. At present, our national compact can prevent a State from acting hostilely towards the general interest. But let this compact be destroyed, and each State becomes instantaneously vested with absolute sovereignty. Is there no instance of a similar situation to be found in history? Look at the States of Greece. They were once in a condition not unlike to that in which we should then stand. They treated the recommendations of their Amphictyonic council, which was more a meeting of ambassadors than a legislative assembly, as we did the resolutions of the old Congress. Are we wise? So were they. Are we valiant? They also were brave. Have we one common language, and are we united under one head? In this also there was a strong resemblance. But by their divisions, they became at first victims to the ambition of Philip, and were at length swallowed up in the Roman empire. Are we to form an exception to the general principles of human nature, and to all the examples of history? And are the maxims of experience to become false when applied to our fate?

Some, indeed, flatter themselves, that our destiny will be like that of Rome. Such indeed it might be, if we had the same wise, but vile aristocracy, under whose guidance they became the masters of the world. But we have not that strong aristocratic arm, which can seize a wretched citizen, scourged almost to death by a remorseless creditor, turn him into the ranks, and bid him, as a soldier, bear our eagle in triumph round the globe! I hope to God we shall never have such an abominable institution. But what, I ask, will be the situation of these States, organized as they now are, if, by the dissolution of our national compact, they be left to themselves? What is the

probable result? We shall either be the victims of foreign intrigue, and split into factions, fall under the domination of a foreign power, or else, after the misery and torment of civil war, become the subjects of an usurping military despot. What but this compact, what but this specific part of it, can save us from ruin? The judicial power, that fortress of the constitution, is now to be overturned. Yes, with honest Ajax, I would not only throw a shield before it, I would build around it a wall of brass. But I am too weak to defend the rampart against the host of assailants. I must call to my assistance their good sense, their patriotism and their virtue. Do not, gentlemen, suffer the rage of passion to drive reason from her seat. If this law be indeed bad, let us join to remedy the defects. Has it been passed in a manner which wounded your pride, or roused your resentment? Have, I conjure you, the magnanimity to pardon that offence. I entreat, I implore you, to sacrifice those angry passions to the interests of our country. Pour out this pride of opinion on the altar of patriotism. Let it be an expiatory libation for the weal of America. Do not, for God's sake, do not suffer that pride to plunge us all into the abyss of ruin. Indeed, indeed, it will be but of little, very little avail, whether one opinion or the other be right or wrong; it will heal no wounds, it will pay no debts, it will rebuild no ravaged towns. Do not rely on that popular will, which has brought us frail beings into political existence. That opinion is but a changeable thing. It will soon change. This very measure will change it. You will be deceived. Do not, I beseech you, in reliance on a foundation so frail, commit the dignity, the harmony, the existence of our nation to the wild wind. Trust not your treasure to the waves. Throw not your compass and your charts into the ocean. Do not believe that its billows will waft you into port. Indeed, indeed, you will be deceived. Cast not away this only anchor of our safety. I have seen its progress. I know the difficulties through which it was obtained: I stand in the presence of Almighty God, and of the world; and I declare to you, that if you lose this charter, never! no, never will you get another! We are now, perhaps, arrived at the parting point. Here, even here, we stand on the brink of fate. Pause—Pause—For Heaven's sake, Pause!!

## HISTORICAL DISCOURSE.

This discourse was delivered before the New York Historical Society, by Mr. Morris, at their anniversary meeting, on the sixth of December, 1812.\*

MR. PRESIDENT, AND GENTLEMEN OF THE HISTORICAL SOCIETY: It was my purpose, in obeying your orders, to make a sketch of our history from the year 1763 to the year 1783, and compare our condition at the close of two victorious wars, in both of which this State was distinguished among her brethren as the principal theatre and greatest sufferer. This important period of twenty years, marked by one of those events on which history delights to dwell, will, I trust, be related with philosophic impartiality by some future Hume, to amuse and instruct posterity, when their ancestors shall have mouldered to dust. But reflection told me the time was not yet arrived. Moreover, the bounds of a discourse like this are too narrow to embrace the more prominent incidents and characters. Another circumstance contributed to deter me: however rapid and concise the narrative, egotism could not wholly have been avoided. This circumstance not only forbade the attempt first contemplated, but raised difficulties which I feared to encounter, in selecting some anterior term. Connected by the ties of consanguinity with persons deeply engaged in those feuds, by which, at an early day, the colony was agitated, I trembled lest duty and affection should wrong the memory of their foes; lest some incautious word of praise or blame should obscure the lustre of truth. I must, therefore, entreat your pardon, that shunning what may be deemed the more proper course, I venture to present some reflections on prominent historical facts and geographical circumstances which distinguish our State.

On a cursory glance at the map of North America, our eye is caught by that deep indent, where Long Island, whose eastern point lies between thirty and forty leagues west of the south end of Nantucket shoal, after stretching thirty leagues, on a course but fifteen degrees to the southward of west, is separated by a deep bay from the main land, whose general direction, from Sandy Hook to Cape Hatteras, is but seventeen degrees to the westward of south. The upper end of that bay, divided from the lower by Staten Island, is nearest to the valley which embosoms the great lakes, the St. Lawrence, and the Mississippi, of any seaport on the Atlantic; and the hills which intervene are neither so numerous, so lofty, nor so steep, as those by which other routes are obstructed.

The city of New York, at the head of this bay, from causes which will probably endure as long as the earth itself, is generally accessible; and the navigation to it is frequently open when that of more southern situations is barred by frost. The channel on the west end of Long Island, though broad and deep, may be so obstructed as to frustrate hostile attempts. The other channel, whose mouth is two degrees to the eastward, and therefore of easier and safer access in dark bad weather, presents a secure and pleasant passage till within eight miles of this city. There a rapid whirlpool and projecting rocks, our Scylla and Charybdis, render it so narrow and difficult, that, although perfectly safe at a proper time, and with a good pilot, it may easily be rendered too hazardous for an enemy. By the first of these channels vessels outward bound, within a few hours after casting off from their moorings, gain the open sea. By the second, those which arrive can, with common prudence, reach safe anchorage without a pilot; and the distance from the mouth of the one to that of the other is such that both cannot easily be blockaded by the same squadron. These circumstances alone, point out New York as a commercial emporium.

But there are others which contribute largely to the same effect. Beside many small streams, the great Connecticut River pours its waters into the eastern channel; and the western shore of Manhattan Island is washed by the Hudson, navigable fifty leagues by large vessels; and what is peculiar to this noble canal, ships take with them a favoring tide beyond all the ranges of mountain east of that great valley already mentioned, which stretches upward of fourteen hundred miles in a southwestern direction from the island of Orleans, in the St. Lawrence, to the city of Orleans, on the Mississippi. To this valley an inland navigation from the Hudson, can easily be extended northward to the St. Lawrence, and westward to the great lakes, whose depth, whose extent, whose pellucid water, and whose fertile shores, are unparalleled. It is probable, that if our western hemisphere had been known to antiquity, those immortal bards who crowned their thundering Jove on the peak of Olympus, would have reared to commerce a golden throne on the granite rock of Manhattan. They might have pictured her as receiving, in a vast range of magazines, from Haerlem village round to Haerlem cove, a distance of twenty miles, the willing tribute of mankind; as fostering industry in the remotest regions; scattering on barren shores that plenty which nature had denied; dispensing to millions the multiplied means of enjoyment, and pouring the flood-tide of wealth on this, her favored land. Not, indeed, that wealth, which, the plunder of war and the

\* Mr. Morris was, at this time, the first Vice-President of the New York Historical Society.

wages of vice, exalts a rapacious head over a servile crowd; but that honest wealth, which, accompanied by freedom and justice, comforts the needy, raises the abject, instructs the ignorant, and fosters the arts. Such are the outlines of a picture which, adorned by classic coloring, might, with the *Iliad*, have been recommended to his royal pupil by that sage whose mind, acute and profound, was equally skilled in moral, physical, and political science.

The first settlement of this State coincided with its natural advantages. While Englishmen came to America, either flying from ecclesiastical intolerance, or pursuing the treasure its savages were supposed to possess; Dutchmen, inspired with the spirit of trade, instead of sitting down on the skirts of the new world, boldly penetrated to the head navigation of the Hudson. They built there a fort, in the year 1614, and gave it the name of that august family, whose talents and labors, in the cabinet and the field, secured the liberty of England, as well as of Holland, and established the independence of Europe.

The Dutch exhibited a new and interesting spectacle. Near half a century had elapsed since, confederated with the other ten provinces of the low countries, they took up arms to oppose the establishment of the inquisition. After a struggle of thirteen years, abandoned by their associates, they had to contend for civil as well as for religious liberty, not only against their bigoted and bloody foe, but against their former friends also; then submitted to his power. They had, for many preceding ages, been free. The supreme authority belonged to the States, who met on their own adjournment, and without whose consent neither laws could be passed, nor taxes raised, nor war declared.\* These privileges, which every sovereign had sworn to defend, were respected by Charles V., but formed no obstacle to the ambition of his unfeeling son. Thus the revolutions, if without the violation of language that term can be so applied, of Holland, of England, and of America, bear a striking resemblance to each other. Each was a contest to maintain the liberty already enjoyed, and defend it against usurpation. In England, a powerful nation, surrounded by the sea, dismissed their prince, and placed on his throne, the husband of his daughter. This work was easy and effectual. In America, the inhabitants of a great continent, separated from the invader by the Atlantic ocean, favored at first by the wishes and at last by the arms of other nations, were successful after a short, though severe struggle. But in the case of Holland, seven poor provinces, whose surface (about eight and a half million of acres) does not exceed one of our senatorial districts,† whose population, a century after establishing their independence, and when they had reached

to the highest point of prosperity, was but two million; about double our present number. These poor provinces sustained a conflict of thirty years with the most powerful nation in Europe. They opposed the ablest generals, at the head of the best troops of that most warlike age. An awful scene! interrupted, not closed, in April, 1609, by a truce of twelve years. When that expired, another contest ensued of seven and twenty years. At length, on the 24th of October, 1648, almost a century, eighty-two years, from the time they first took up arms, their independence was acknowledged by the treaty of Westphalia.

It is natural here to ask, by what miracle did these feeble provinces resist that mighty empire? The sufficient, and only sufficient answer, is, by the will of Him who holds in his hand the destinies of mankind. He bade their gloomy climate produce a persevering people, whose industry no toil could abate, whose fortitude no danger could dismay. He gave them leaders sagacious, intrepid, active, unwearied, incorruptible. He, as of old, from the eater brought forth meat, and from the strong, sweetness. He gave them food from a tempestuous ocean, and treasure from the jaws of devouring despotism. But if, with reverence, we seek those causes to which reason may trace events, we shall find the miracle we admire to have been the work of commerce. From the sea they gathered means to defend the land against hostile armies on one side, and against the sea itself on the other: for the singularity of their situation exposed them, alike to be inundated and to be subdued. The sea, which threatened, and still threatens to overwhelm them, gave access to the riches of both the Indias. They pursued, along that perilous road, the persecutors of mankind, and wrested from their grasp the unrighteous plunder of Mexico and Peru. Thus, surrounded by danger, impelled by want, inured to toil, animated by exertion, strengthened by faith, stimulated by hope, and exalted by religion, a few miserable fishermen, scattered on a sterile coast, were converted into a race of heroes. They acquired power in the struggle for existence, and wealth under the weight of taxation.

Such, gentlemen, were our Dutch ancestors, who, immediately after concluding the twelve years' truce, came hither and brought with them their skill, their integrity, their liberty, and their courage. From a sense of justice, that animating soul of commerce, without which it is a dead, and must soon become a corrupt and stinking carcass, they entered into a treaty with the natives; in whom they found patience, fortitude, and a love of liberty like their own. While the seven United Provinces, by their steady perseverance, astonished the nations of the east, our six confederate tribes, by their

\* Grotius de Anti. Repub. Bat. cap. 5.

† Busching's Geography, *Introd.* to the Netherlands, sec. 8. and 5. The Germans divide the degrees into 15 geograph-

ical miles, which gives, in round numbers, about 13,600 acres to the square geographical mile; of which he gives to the Netherlands, 625.

military prowess, subdued those of the west. The first treaty formed between the Dutch and the Maquaas, or Mohawks, has been frequently renewed; and few treaties have been better observed. The excellent discourse\* delivered to you last year, leaves me nothing to say of those tribes. Permit me, however, to express the astonishment, in which you will doubtless participate, that men, reputed to be wise and learned, should suppose the people of this State, born, brought up, and situated as they are, can be restrained from commercial pursuits.

Half a century after Fort Orange was built, Charles II. of England, within three years from his restoration, granted this State to his brother, the Duke of York; and in that year (1664) it was conquered by the British arms. England, which Elizabeth (after reigning near five-and-forty years) had left in the possession of peace, wealth, and glory, passed two-and-twenty more under a conceited pedant, powerful in words, and poor in act. He had neither the courage to establish, nor the magnanimity to abandon prerogatives, which, inconsistent with the spirit of his age and country, became every day more and more intolerable. Thus the scholastic imbecility of a projector prepared the tragic scene in which his son was doomed to act and to perish. A hideous scene, where the spectators beheld, with horror and dismay, justice violated, honor polluted, religion degraded, and freedom destroyed. But great crimes were palliated, as they were perpetrated, by great talents. The infamy of murder and usurpation was ennobled by the sword of victory. And the multitude, dazzled by the splendor of success, that adoration which is due to virtue alone, was blindly and basely offered at the shrine of power. In seventeen years after Charles ascended his father's throne, he was engaged in civil war. At the close of another seventeen years he was led to the scaffold. During nine years the British sceptre was in the iron grasp of Cromwell. He made the nations tremble. But in less than three years from his decease, the son of Charles was restored. Fortunately for our freedom, this witty sensualist, who, if we are to believe one of his profligate companions, "never said a foolish thing, and never did a wise one," although he had the sense to perceive, had not the steadiness to pursue, nor the address to secure, the advantages of his situation. He might have put himself in possession of absolute power over a nation inured to war, and naturally brave. He might have held in his hand the fate of Europe. He might have been the rival of Louis the Fourteenth; perhaps his superior. Instead of this, he basely became his pensioner, and in that mean condition waged war with the United Netherlands. But a majority of his Parliament, too wise to be deceived, too brave to be intimidated, too honest to be seduced, obliged him to make peace, by withholding the means to make war.

\* By the Hon. De Witt Clinton.

The first of these wars was terminated in three years by the treaty of Breda which gave New York to the British crown, the 26th of January, 1667.

After a licentious reign of near two-and-twenty years, the throne of inglorious Charles was mounted by his bigoted brother James who, crowned in 1684, fled to France in 1688. Half a century had elapsed, from the time when Charles the First made his lavish levy of ship money, to the accession of his son James. In the former half of this period the English character was degraded by hypocrisy and crime, in the latter by impiety and vice. During the first five-and-twenty years, we had no connection with them. On the contrary, for two years, from 1652 to 1654, there was war between Oliver Cromwell and the States General. During the last five-and-twenty, we were secured against the contagion of their immorality, by distance, by poverty, and by the simple manners and habits which characterized our Dutch ancestors. Six years after New York was ceded to Charles the Second, it was retaken by the Dutch, but restored to England the 9th of February of the next year (1674) by the treaty of Westminster. In little more than fifteen years from that period, an insurrection under Leisler took this city for King William; whose war with France (terminated by the treaty of Ryswick, in 1697) lasted eight years. After a short breathing of four years, however, it was renewed, in the beginning of the last century, and lasted thirteen years more; till, at length, the treaty of Utrecht, on the 11th of April, 1714, followed by the death of Queen Anne in August of the same year, and of Louis XIV. on the first of September in the next year, gave to our country a more durable repose. For though it might have been imagined that our distance and our insignificance would have secured us, a lowly bush, from tempests which tore the tops of lofty trees; yet, bordering as we do on Canada, so long as France continued in possession of that province, every war in which she was engaged with England, laid waste our frontiers, and, calling forth every effort for their defence, exhausted our resources. From this rapid sketch, gentlemen, it appears that, children of commerce, we were rocked in the cradle of war, and sucked the principles of liberty with our mothers' milk. Accordingly, we find that long before that controversy which rent the British empire asunder, in disputes with royal governors attempting to stretch authority beyond its just bounds, there was a steady appeal, by our fathers, to the principles on which the Belgic and British patriots relied in their opposition to tyranny.

The revocation of the edict of Nantz, in the year 1685, drove many French protestants to seek an asylum on our shores, and Governor Hunter, in the year 1710, brought with him a number of palatines. Thus our ancestry may be traced to four nations, the Dutch, the British, the French, and the German. It would

have been strange had a people so formed, been tainted with national prejudice. Far from it. We are, if I may be allowed to say so, born cosmopolite; and possess, without effort, what others can with difficulty acquire by much travel and great expense. But as no earthly good is pure, so this equal respect and regard for strangers diminishes the preference to natives, on occasions where natives ought to be preferred; and impairs the activity, if not the strength, while it removes the blindness of patriotic sentiment. In like manner, it may be numbered among the advantages of commerce, that a liberality which extends to foreign correspondents, the gentle appellation of friend, encourages the growth of general benevolence. It is at the same time to be lamented, that with this amiable sentiment is connected, a fondness for the fashions and productions of foreign countries which is injurious to the simplicity of ancient manners. But, from the combined operation of these causes, the emigrant from every nation finds himself here at home. Natives of the Alps, the Pyrenees, the Apennines, the highlands of Scotland, and the mountains of Wales, as well as those who inhabit the banks of the Shannon, the Thames, the Seine, the Rhine, and the Danube, meeting here, see in each other the faces of fellow-countrymen. It results, from our mixed population, that he who wishes to become acquainted with the various languages and manners of mankind, need not ramble into distant regions. He, also, who would trace up society to its origin, can here behold it in the rudest condition. He can safely shut the volumes of philosophic dreaming, and look into the book of nature which lies open before him. Ethical reasoning may here be raised on the foundation of fact. If it be admitted, as a principle in the natural history of animals, that the state in which a particular species of them is most powerful and abundant, is the best suited to its nature, and therefore its natural state, it may be concluded that the natural state of man is that in which they have the most activity, strength, and beauty. If this conclusion be just, we need but open our eyes on our savage brethren to be convinced, by a comparison of them with civilized man, that in so far as regards our own species, the state of nature and of society are one and the same. The half-naked Indian, who now sits shivering on the banks of Niagara, while he views that stupendous cataract, may view also the ships, the houses, the clothing and arms of his civilized fellow-creatures, and hear the thunders of their cannon roar louder than the torrent. If he compares his feeble means and wretched condition with their power and wealth, he cannot but be sensible of his great inferiority. And much more will civilized man, who, daring death at the call of duty, not only spares an unresisting foe, but soothes his distress, relieves his wants, and heals his wounds—much more will he feel superiority over the savage hunter of men, whose rule of

war is general slaughter; whose trophies are torn bleeding from the skulls of women and children, and who gluts his ferocity by the torture of helpless prisoners. The civilized man will perceive, also, if history has occupied his attention, by comparing the laws of ancient and modern war, the influence, and, in that influence, the truth of our holy religion. If it be true that one great end of history is to communicate a knowledge of mankind, and, by making man acquainted with his species, facilitate the acquisition of that most important science, the knowledge of himself; we may be permitted to believe that a faithful narrative of deeds done by our fathers will eminently merit a studious regard. The comparison which will, obtrusively, present itself between the aboriginal tribes, the various colonists, the emigrants from Europe, and the troops of different nations, will display a more perfect picture of our species than can easily be delineated on any other historical canvas. Neither will the strong lineaments of character be wanting. Those arduous circumstances which marked our origin, and impeded our growth; those ravages to which we were exposed, not only until the treaty of Utrecht, but in the war from 1744 to 1748, terminated by the treaty of Aix-la-Chapelle; in that which began in 1755 and ended in 1760 by the conquest of Canada, and in our war with Great Britain, from April, 1775, to November, 1783; above all, the persevering efforts to defend our country, in that long period of near one hundred and seventy years from the first settlement by the Dutch in 1614, to the time when this city was evacuated by the British in the close of 1783, during which there was little repose (except in a space of thirty years which elapsed between the peace of Utrecht and the war of 1744) brought forth men worthy of respectful imitation, and formed the mass of our citizens to the hardihood of military life; notwithstanding a soil and climate which, teeming with abundance, tempt to the enjoyment of ease and luxury.

May we not be permitted, also, to believe that they are by nature brave? Pardon, gentlemen, a digression which, though it should conclude nothing, may furnish amusement—perhaps reflection. He who visits the nations which Tacitus and Cæsar have described, will be struck with a resemblance between those who now inhabit particular districts, and those who dwelt there so many centuries ago. Notwithstanding the wars and conquests which have laid waste, depopulated, and repopulated Europe; notwithstanding the changes of government, and those which have been wrought by the decline and by the advance of society and the arts; notwithstanding the differences of religion, and the difference of manners resulting from all other circumstances; still the same distinctive traits of character appear. Similar bodies are animated by similar souls. We find, also, extending our view a little further east, and taking in a larger surface of the globe,

that peculiarities in civil establishment and political organization, corresponding with the peculiarities of national character, have, from the earliest ages, distinguished those regions. We find that the attempt of tyrants to establish despotism, in some countries, was frequently baffled; while the endeavor of patriots to secure freedom, in others, was equally fruitless. He who considers the changes wrought by the tide of time on the face of our globe, this solid earth itself alternately raised above the ocean or plunged beneath its waves, and perceives those peculiarities of form and mind, which remain unchanged through such a long succession of generations, must be struck with the idea of the simple Indian, who, pressed to sell the possession of his tribe, replied, "We grew out of this ground. In its bosom our fathers repose. What! Shall we call upon their bones? Shall we bid them arise and go with us to a strange land?"

We, gentlemen, grew out of this same ground with our Indian predecessors. Have we not some traits to mark our common origin? This question will be answered with more precision, when, after the lapse of centuries, the blood of our progenitors, operating with less force, the changes produced, not only in man, but in other animals, by that unknown cause which exhibits a peculiar race in each particular country, shall be more fully displayed. Let us, however, collect the facts which now present themselves. Among the curiosities of newly-discovered America was the Indian canoe. Its slender and elegant form, its rapid movement, its capacity to bear burdens and resist the rage of billows and torrents, excited no small degree of admiration for the skill by which it was constructed. After the lapse of two centuries, the ships of America were equally admired in the ports of great naval powers, for their lightness, their beauty, the velocity with which they sail, the facility with which they are managed. Nautical architecture may be considered as one of the most important branches of mechanic knowledge. The higher order of mathematic science has been called into act for its advancement. And certainly a line of battle ship is one of the most powerful engines that was ever framed. In comparison with it, the ancient inventions, for defence or destruction, dwindle almost to insignificance. And yet our untutored ship builders have, by the mere force of genius, excelled their European brethren in this difficult, complex art. So great is the difference, that children distinguish, at first sight, the American ship ascending the Elbe to Ham-burgh, a city of considerable trade long before Columbus was born. Again: We find among our savage tribes the commemoration of events by painting; rude, indeed, but more distinct than in other barbarous nations. May I not remark that an American is at the head of that art in England, and that many others, who excel in it, drew their first breath on our shores. Again: Let me recall, gentlemen, to your recol-

lection, that bloody field in which Herkimer fell. There was found the Indian and the white man, born on the banks of the Mohawk, their left hand clenched in each other's hair, the right grasping, in a gripe of death, the knife plunged in each other's bosom. Thus they lay frowning. Africa presents a number of nations, like those of America, uncivilized. But how different! I will not say inferior, for they also have excellence peculiar to themselves. They are not, indeed, either painters or builders; but nowhere, not even in Italy, is the taste for music more universal.

If we believe, with Frederick the Great, that reason and experience are the crutches on which men halt along in the pursuit of truth, it may not be amiss to ask the aid of what is known about the Indian character and history, in order to draw the horoscope of our country. What is the statesman's business? If futurity were known, the simplest which can be imagined. For, as in reading Virgil we find the verse so smooth that every scholar thinks he could easily make as good; so, in glancing his eye along the page of history, an indolent reader figures to himself that he too could be a prince of Orange, a Walsingham, a Richelieu. And so, indeed, he might, by the aid of self-command, common prudence, and common sense, could he see into futurity, and penetrate the thoughts of those with whom he is to act. But there lies the difficulty.

Let us see, then, whether some other characteristic of the aborigines may not open to us a view of ourselves, and the perspective of our country. It has already been noticed that the Dutch, on their arrival, found the Indian tribes free. They were subject neither to princes nor to nobles. The Mohawks had not, like the Romans, naturalized those whom they subdued. It was a federal nation, a federal government, a people as free as the air they breathed; acute, dexterous, eloquent, subtle, brave. They had more of the Grecian than of the Roman character. The most strongly marked, perhaps, of their moral features, was a high sense of personal independence. Is it not likely that this may be the character of our children's children? May we not hope that the liberty to which we were bred, will be enjoyed and preserved by them? It must, indeed, be acknowledged, that an extent so vast as that of the United States is less favorable to freedom than a more confined domain, and gives reason to apprehend the establishment of monarchy. Moreover, the anxious patriot may well tremble at the prevalence of faction, at the attempts to prostrate law, and at those absurd principles of mob power, as wildly preached by some as they are wickedly practised by others. Still there is ground of hope. Still it is permitted to believe, that those who pursue despotic power, along the beaten path of democracy, and expect to establish their dominion over the people, by flattering the populace, will be sorely disappointed. The soul of this nation cannot be sub-



dued. Neither will those who tread the soil in which the Mohawks are entombed submit to be slaves.

I shall not be surprised that ideas of this sort are treated as visionary speculations. When the great Chatham, in January, 1775, having moved an address for recalling the British troops from Boston, said, in a speech which will ever do honor both to his eloquence and discernment, "America, insulted with an armed force, irritated with a hostile army before her eyes, her concessions, if you could force them, would be suspicious and insecure. But it is more than evident that you cannot force them to your unworthy terms of submission. It is impossible. We ourselves shall be forced ultimately to retract. Let us retract while we can; not when we must. I repeat it, my lords, we shall one day be forced to undo these violent, oppressive acts. They must be repealed. You will repeal them. I pledge myself for it, that you will in the end repeal them. I stake my reputation on it. I will consent to be taken for an idiot if they are not repealed." When the venerable statesman thus poured forth prophetic eloquence, the wise ones of that day, exulting in "a little brief authority," shrugged up their shoulders, and said, with a sneer of affected commiseration, poor old peer! he has outlived his understanding. In fancy, to be sure, he is young and wild, but reason is gone; he dotes. So, too, in the height of Gallic frenzy, there was a cry raised to hunt down those who, reasoning and reflecting, foresaw and foretold a military despotism as the natural, the necessary result of such unexampled atrocities. It became a fashion to speak of those who warned their country against the contaminating touch, the infectious breath of licentious pollution, as enemies of liberty, as mad with aristocratic notions, as whimsical and fantastic. But now the predictions of Chatham and of Burke are verified. And it may now be asked, where are the men who called those eloquent sages fools? They are precisely where Chatham, who knew mankind, would have predicted. They are in authority, and enjoy the blind confidence of disciples, who, when their masters shall have blundered on ninety and nine times more, will most faithfully adhere to them in their hundredth blunder.

Returning from this digression, I take leave to observe that our State will support a population of four millions. Already it exceeds nine hundred thousand white inhabitants, although twenty years ago it was but little more than three hundred thousand. When, therefore, the salubrity of our climate, the fertility of our soil, the convenient situations for manufacturing establishments, and our advantageous position for trade, are considered, there is reason to believe the period not distant when we shall count four million inhabitants: and, certainly, our wealth, if we are blest by a good government, must keep pace with our population. New-York, connected with her eastern brethren and New-

Jersey, had, in 1810, more than two million and a half of white inhabitants; wherefore we may reasonably conclude, that in half a century they will contain eight millions; for in 1790 their number was short of one million and a half, and in 1800 was near two; having increased about one third in each term of ten years, but more than three fourths in the whole term of twenty years, viz. from 1,476,631 to 2,597,634. Though not distinguished as a manufacturing people, yet, judging by those fruits which the inventive genius of our fellow citizens has produced, we may reasonably foster, even in that respect, exulting expectations. Numerous on land, we are not strangers at sea. Our country abounds in iron, and the use of it is not unknown to her children.

If, then, monarchy and aristocracy establish themselves in other portions of America; if the variously-colored population of States in which domestic slavery prevails, should be condemned to civil and political slavery; if they should be subjected to haughty caciques, let us hope that here we may be led by the council of our sachems. Let it not, however, be supposed, that a breach of the federal compact is intended: for, setting aside all attachment to national union, so essential to public tranquillity, if a separation of the States were contemplated, the Delaware would not be chosen as their boundary. But when the great extent of our country; when the violence of rash men; when the dangerous inequality of civil condition; when the contempt which some express for others, alarm those whose lives have been devoted to liberty, it is natural to look about and inquire, if there be no asylum to which freedom may fly when driven from her present abode. In such moments of anxious solicitude, it is no small consolation to believe, that here, whatever may be her fate elsewhere—here, gentlemen, her temple will stand on a foundation immovable. Here we have, at this moment, more free citizens than the whole union could boast of in 1775. And here, I fondly hope—here, I firmly believe, the spirit of 1775 still glows in the bosoms of the brave.

It is among the circumstances which ought not to be overlooked, in this general view of our history, that the practice of law has been strictly modelled on that which prevails in what we formerly called our mother country; that land of good nature and good sense from which we learned the most useful lessons of our lives: our liberty, our laws, and our religion. Wits may scoff at the pedantry of special pleading, the barbarous phraseology of lawyers, and stern severity of judges, who, trampling on the flowers of eloquence, check babbling, and confine the bar within the bounds of strict logic; but those who think, will perceive, that inasmuch as things are expressed by words, precise expressions can only be effected by words of established signification; and since the rule of conduct cannot be applied until the fact be established, it is a prerequisite that such precise

assertion be made by the one party, and such precise negation by the other, as distinctly to state the facts to be ascertained. The judges of fact can then accurately determine on its existence; and, that done, the judges of law can apply the rule. Every case, so adjudged, will serve as a rule for cases which may afterward arise; and thus the general principles of natural justice, the maxims of ancient usage, and the positive injunctions or inhibitions of legislative providence, are extended to the infinite variety of human actions and relations; so that liberty and property are secured. Nor is it, as many have hastily supposed, an evil, that law is expensive to suitors: for, as far as the suitor himself is concerned, by deterring him from litigation, it strengthens, if his cause be good, the sentiment of benevolence, and enforces, if bad, the duty of justice. By lessening the number of suits, it diminishes the causes of discord. Trifling injuries, which, if unnoticed, would soon be forgotten, may, by a vindictive spirit, be made the subject of controversy, and separate families for more than one generation. Moreover, this great expense of law is a great public economy: for when cheap lawyers, multiplying trivial causes, crowd tribunals with a host of jurors, parties, witnesses, and their needful attendants, many fields lie uncultivated, many workshops are neglected, and habits of idleness and dissipation are acquired, to the manifest injury and impoverishment of the republic.

Is it a suggestion of fancy: or am I warranted in supposing that rigid practice of law may give somewhat of precision to general modes of thinking; that it may even render conversation less diffusive, and therefore more instructive; that the accuracy of forensic argument may communicate vigor to parliamentary debate; that the deep sense and grave deportment of the bench and bar may have imparted to our character more of solidity than it would otherwise have possessed? This city was long the head quarters of a British army; and familiar intercourse with officers, many of whom were men of family and fashion, while it gave, perhaps, a little of that lustre and polish which distinguish the higher ranks of society, could not but dispose young people to levity and mirth, more than is suited to the condition of those who must earn their living by their industry. Man is an imitative animal. Not only his deportment, his language, and his manners, but even his morals depend, in a great degree, on his companions. Let us suppose two individuals, of twin resemblance as to intellectual disposition and power, one of them frequently attending on courts of strict practice, the other on those where lengthened declamation wears out tedious days on questions of trifling import: would not the latter slide into a loose mode both of thinking and speaking; might he not conceive that to talk long is to talk well; might he not attend too much to the melody of periods, too little to the precision of thought;

might he not, at length, be exposed, from indulging the habit of loose thinking, to the danger of loose acting? It requires accuracy of investigation and clearness of perception to distinguish right from wrong, when, in doubtful circumstances, self interest is concerned. A man, therefore, may easily be induced to do wrong, in compliance with what he feels to be his interest, when he thinks it may be right; especially, when he thinks that those who are to judge may be prevailed on to decide in his favor. Is there not, on the other hand, reason to suppose, that he whose course of life has led him to scenes of sharp inquiry; who has listened to arguments of precise logic; who has participated in decisions of legal strictness; is there not reason to believe, that this man will use a diction more concise, possess a judgment more acute, and observe a more correct line of conduct?

These probable, or, at least, possible effects of forensic accuracy, may be increased, or diminished, or destroyed, by the ever-varying circumstances of our civil and social condition. Nay, their very existence may be questioned, or attributed to other causes. Talents and habits of observation must be exercised to make the due investigation. But there is one important consequence which cannot easily be overlooked or assigned to any other cause: I allude to the value of property in this State; and merely mention it, because detailed observations would be tedious—perhaps invidious. Permit me, however, to notice the more prominent reasons why it must produce that effect, in the political associations of mankind. It is evident, at the first blush, that a purchaser of land will give more for a good than for a doubtful title; and it is equally evident that titles must be less secure where scope is given to declamation, than where strict practice and close logic are required. If we look a little nearer, we shall perceive a more extensive consequence. The creditor who is certain of getting speedily what is due to him, provided the debtor possess sufficient property, will be more liberal of credit than where the recovery of debts is tedious and uncertain. But credit is equivalent to money, and, like money, not only enhances the price of property, but, obviating the want of money, becomes, to the nation in which it prevails, a substitute for that intrinsic value, part of their capital stock, which would, otherwise, be sent abroad to procure the precious metals.

Indulge me, gentlemen, while on this subject, in another observation. The more strict and regular is the practice of law, the greater is our certainty that the guilty will be punished; and, of necessary consequence, that the innocent will be protected. The law, when it is a terror to evil doers, is the safeguard not only of property but of life, and of that which wise and virtuous citizens value more than life—it is the protector of liberty. Where the law is supreme, every one may do what it permits without fear;

and from this happy condition arises that habit of order which secures the public peace. But when any man, or association of men, can exercise discretionary power over others, there is an end of that liberty which our fathers enjoyed, and for which their sons bled. Whenever such an association, assuming to be the people, undertake to govern according to their will and pleasure, the republic which submits; nay, the republic which does not immediately subdue and destroy them, is in the steep downhill road to despotism. I cannot here, gentlemen, help congratulating you on the high standing of our city during late events, and adding my feeble approbation to the full applause so justly bestowed on its magistrates. To say more might look like adulation. To say less would be a want of gratitude.

Among the singularities of our history, is the slow progress of population, previous to the year 1783, compared with that of other States. Jamestown, in Virginia, was founded in 1607, Quebec in 1608, New York in 1615, New Plymouth in 1620. Thus, in the short space of fourteen years, these different plantations of mankind were made. The settlement of Pennsylvania was undertaken full sixty years later: and yet at the commencement of the war for defence of our rights, one hundred and fifty-five years after the first settlement of New Plymouth, and only ninety-four years after the first settlement of Pennsylvania, the population, according to the congressional estimate, was, of

The Eastern States, exclusive of Vermont, nearly as	70
That of New York, Vermont, and New Jersey,	33
That of Pennsylvania and Delaware,	32
And that of Maryland and Virginia,	64
Together,	200

Moreover, according to that estimate, the proportion of the States of Virginia, Pennsylvania, and New York, was,

Virginia,	44
Pennsylvania,	33
New York, including Vermont,	22
Together,	99

But Virginia had been planted 168 years, New York 160. and Pennsylvania only 94, which gives a proportion to

Virginia, of	39
Pennsylvania,	38
And New York,	22
	99

So that the population of Virginia had advanced, compared with the term of settlement, 5, and Pennsylvania 11, while New York was deficient 16. The citizens of Pennsylvania, warmed with that attachment to their country so honorable to man, attributed their superior prosperity to natural and moral advantages which they believed themselves to possess. They supposed their climate more mild than ours, more salubrious than that of Virginia, their soil more fertile than either, and they contrasted the simplicity of manners among those

called Quakers, and their equality of civil condition, with what they supposed to be the luxury and aristocracy of men to whom manors had been granted, and who were the masters of slaves. The citizens of New York, however, believed that the comparative prosperity of Pennsylvania might more naturally be attributed to circumstances more evident, and of less doubtful operation. Without acknowledging either a moral or civil superiority, they believed that nature had given them as good a climate, a better soil, and a more favorable situation; but their country had been from the beginning, a theatre of war, and stood in the fore front of the battle. New York was, like Joseph, a victim of parental kindness. Not, indeed, that her brethren, like his, were disposed to sell or kill the favorite child; but that their enemy endeavored to subdue her, as the means more effectually to annoy them. The only accurate solution of such questions is made by time. For as experience is the ground-work, so is time the test of political reasoning. At the end of seven years from the period when the estimate mentioned was made, by the first Congress, another severe hurricane of war had blown over our State, and laid it in ruins. Our frontier settlements had been broken up, and a part of our capital reduced to ashes. Our citizens were banished or beggared, and our commerce annihilated. Whatever doubts, therefore, may have been entertained as to the accuracy of proportions taken in 1775, there was no doubt left in 1783, but that we were below the ratio assumed when the war begun. In less than eight-and-twenty years, from that time, the census was taken on which the representation in Congress is apportioned. And according to the ratio thereby established,

The Eastern States, exclusive of Vermont, are as	53
New York, Vermont, and New Jersey,	60
Pennsylvania and Delaware,	33
Maryland and Virginia,	49
Total,	200

Or allowing for the black population, which is not fully represented, the number would be,

In the Eastern States, exclusive of Vermont, as	51
New York, Vermont, and New Jersey,	58
Pennsylvania and Delaware,	36
And Maryland and Virginia,	55
Total,	200

If this be compared with the first proportion, viz., that made by estimate, in 1775, we shall find that the Eastern States have decreased 19, Virginia and Maryland 9, while this State, with Vermont and New Jersey, have increased 25, Pennsylvania and Delaware 3. Or taking the relation between Virginia, Pennsylvania, and New York, which was,

Virginia, then,	44	Now,	45
Pennsylvania, then,	33	Now,	29
New York, with Vermont,	22	Without Vermont,	85
	99		99

It appears that Virginia has decreased 2, and Pennsylvania 4, making the 13 which New York

has gained. In respect to Virginia, however, the variation may arise from those colonies which have left the ancient dominion to people southern and western States. It may be well, therefore, to confine our view to a comparison of this State with her sister Pennsylvania. In July, 1775, the Congress estimated the population of Pennsylvania and that of New York, then including Vermont, in a proportion of three to two, which gives to

Pennsylvania, . . . .	30
New York, . . . .	20
	<hr/>
	50

but by the late apportionment of representatives,

Pennsylvania has . . . .	23
New York, . . . .	27
	<hr/>
Together, 50	

So that in the space of twenty-eight years of peace, from 1783 to 1811, Pennsylvania has lost seven in thirty, and New York has gained seven in twenty, on their relative proportion: and this, too, without including Vermont. Finally, the matter may be examined in a still more simple point of view, and speaking in round numbers, if the estimate of 1775 be considered as tolerably accurate, Massachusetts has increased one half, Pennsylvania has doubled, and New York quadrupled, since it was made.

Excuse me, gentlemen, for dwelling so much on a calculation which may appear to some as mere amusement. It shows by conclusions, which, founded on arithmetic, cannot be questioned, that the growth of this State was impeded only by the wars in which it has been so often, so deeply, and so disastrously engaged. From 1614, when Fort Orange, now Albany, was built, to 1810, when the last census was taken, there are seven terms of twenty-eight years. During the first six terms, which ended in 1782, we had not attained to more than one-fourth of our present condition. It has already been observed, that the settlement of Pennsylvania began in 1681, but as it may be contended that antecedent settlements in Delaware and New Jersey facilitated the undertaking of Mr. Penn, we may go back a few years, and suppose it to have commenced in 1670, from which time to that in which the last census was taken, there are five terms of twenty-eight years. In the first four, Pennsylvania attained to one half of her present condition, and had acquired more by one half than we had in six. But in the last term they have little more than doubled, while we have quadrupled. But it may be said that no reliance ought to be placed on the estimate made by Congress in 1775, and that comparisons drawn from proportions then assumed, are not convincing. It may be well, therefore, to test the question by a standard whose accuracy cannot be denied. The census of 1790 gave to Pennsylvania 424,099 white inhabitants. The increase in ten years was 38 per cent., in the next ten years 34 per cent. (or in the whole twenty years 85 per cent.),

so as to amount in 1810 to 786,804. The census of 1790 gave to New York only 314,142 white inhabitants; being to Pennsylvania, even then, only in the proportion of near three to four. The increase in ten years was 77 per cent., in the next ten years 65 per cent. (or in the whole twenty years, 192 per cent.), so as to amount in 1810 to 918,699: being to Pennsylvania, in the proportion of seven to six. And now let a glance be cast at the position of lands which have been settled in those two States within the last twenty years. They are separated from each other by the river Delaware, for more than fifty miles, and then only by a mathematical line, for more than two hundred miles. It may be asserted, without danger of contradiction, that along this extensive frontier, New York is more thickly settled than Pennsylvania. Without contending, therefore, as to civil or moral advantage, it can hardly be denied that a soil and climate which have attracted such great population in the last term of twenty-eight years, would have thickly settled the State long ago, had it not been for a political cause, which, while it retarded the population of New York, promoted and accelerated the population of Pennsylvania. The political cause, unhappily for us, again brought into operation, was war with the possessor of Canada. It has already been noticed, that in the last ten years our number has increased 65 per cent. This city has in that period, nearly keeping pace with the aggregate, increased 60 per cent. But the western district has increased at the rate of 175 per cent. If we add the counties of Montgomery, Essex, Clinton, and Franklin, so as to embrace the whole northern frontier, the rate of increase is 163 per cent.; the amount upwards of 261,000, whereas that district, those counties, and this city excepted, the ratio for the rest of the State was only 20 per cent.; and the amount little more than 75,000. In effect, near 262,000 out of not quite 373,000, our total increment, belonging to our northern and western country; so that seven-tenths of that growth, which we beheld with astonishment and exultation, was the produce of a country now exposed to the chance and disasters of war. Nearly one other tenth was in the capital. This, gentlemen, is neither the place nor the occasion to inquire into the policy, much less the justice of those measures, by which we are distressed. Bowing with deference to the national government, I am willing to suppose, that in so far as regards the United States, the war may have been begun, and is now carried on justly, wisely, happily; but for us, most unhappily. Every member of this society is, undoubtedly, disposed, by every proper exertion, and every possible sacrifice, to support the honor and independence of our country. But he must be void of discernment who does not perceive, that war with the greatest naval power is no happy condition for a commercial people. Whether America will eventually rejoice in trophies gained, territory acquired, and privileges torn from an ene-

my subdued, or whether she shall weep for defeats sustained, dominion lost, and rights surrendered, must depend, under God, on the manner in which this war shall be conducted, and the wisdom and integrity of the negotiations by which it shall be concluded. But, whatever may be the feelings of our sister States, whether they, as events may indicate, shall clothe themselves in scarlet, or in sackcloth, our house will, in all probability, be a house of mourning.

It is by the light of history and geography that we discern the interests of a country, and the means by which they can best be pursued, and secured. Am I mistaken in concluding, from the foregoing details, which may, I fear, have been tedious to you, that we should encourage husbandry, commerce, and useful arts, as the great columns which are to support the fabric of our wealth and power? That we should promote order, industry, science, and religion, not only as the guardians of social

happiness, but as the outworks to the citadel of our liberty? And, finally, that we should, as the best means of effecting those objects, so arrange our concerns, as that the management of public affairs be entrusted to men of wisdom, firmness, and integrity? I will venture to add the idea that, in any political change which circumstances may induce, we should respect the example of our predecessors, the Six Nations, and not be persuaded to ask for a king, that he may go out before us, like the other nations, nor submit to the sway of hereditary nobles. It would be a fatal delusion, if, for the military vigor of one institution, or the political cunning of the other, we should surrender that freedom which ennobles man. Nor would it be less fatal, that, with a view to simplicity and unity, we should permit the consolidation of too great a mass: for history teaches that republican spirit is liable to ferment, when in a large vessel, and be changed to the corroding acid of despotism.

#### NAVIGATION OF THE MISSISSIPPI.

The following speech on the resolutions of Mr. Ross,\* relative to the free navigation of the Mississippi river, was delivered, by Mr. Morris, in the Senate of the United States, on the twenty-fourth of February, 1803.

MR. PRESIDENT: I rise with reluctance on the present occasion. The lateness of the hour forbids me to hope for your patient attention. The subject is of great importance, as it relates to other countries, and still greater to our own: yet we must decide on grounds uncertain, be-

cause they depend on circumstances not yet arrived. And when we attempt to penetrate into futurity, after exerting the utmost powers of reason, aided by all the lights which experience could acquire, our clearest conceptions are involved in doubt. A thousand things may happen, which it is impossible to conjecture, and which will influence the course of events. The wise Governor of all things hath hidden the future from the ken of our feeble understanding. In committing ourselves, therefore, to the examination of what may hereafter arrive, we hazard reputation on contingencies we

\* The treaty of 1795, between the United States and Spain, secured to the citizens of the former the free navigation of the river Mississippi, and a privilege of deposit in the island of New Orleans, for three years; the privilege to be continued after the expiration of the three years, provided, during that time, it was found not to be prejudicial to the interests of Spain. And it was also stipulated, that if it should not be continued there, an equivalent establishment should be assigned at some other place upon the bank of the Mississippi.

During the month of October, 1802, the Intendant of New Orleans issued a proclamation, prohibiting the citizens of the United States from depositing their merchandise at New Orleans, without assigning any other equivalent establishment, according to the articles of the treaty.

Pending those affairs, Mr. Ross submitted to the Senate the subjoined resolutions: *Resolved*, That the United States of America have an indisputable right to the free navigation of the river Mississippi, and to a convenient deposit for their produce and merchandise in the island of New Orleans:

That the late infraction of such their unquestionable right be an aggression, hostile to their honor and interest:

That it does not consist with the dignity or safety of this

union to hold a right so important by a tenure so uncertain:

That it materially concerns such of the American citizens as dwell on the western waters, and is essential to the union, strength and prosperity of these States, that they obtain complete security for the full and peaceful enjoyment of such their absolute right:

That the President be authorized to take immediate possession of some place or places, in the said island, or the adjacent territories, fit and convenient for the purposes aforesaid, and to adopt such measures for obtaining that complete security, as to him, in his wisdom, shall seem meet:

That he be authorized to call into actual service any number of the militia of the States of South Carolina, Georgia, Tennessee, Kentucky and Ohio, and the Mississippi territory, which he may think proper, not exceeding fifty thousand, and to employ them, together with the naval and military force of the Union, for effecting the object above mentioned:

That the sum of five millions of dollars be appropriated to the carrying into effect the foregoing resolutions, and that the whole or any part of that sum be paid or applied on warrants, drawn in pursuance of such directions as the President may from time to time think proper to give to the secretary of the treasury.—*Annals of Congress*, 1803.

cannot command. And when events shall be past, we shall be judged by them, and not by the reasons which we may now advance.

There are many subjects which it is not easy to understand, but it is always easy to misrepresent, and when arguments cannot be controverted, it is not difficult to calumniate motives. That, which cannot be confuted, may be misstated. The purest intentions may be blackened by malice; and envy will ever foster the foulest imputations. This calumny is among the sore evils of our country. It began with our earliest success in '78, and has gone on, with accelerated velocity and increasing force, to the present hour. It is no longer to be checked, nor will it terminate but in that sweep of general destruction, to which it tends with a step as sure as time, and fatal as death. I know, that what I utter will be misunderstood, misrepresented, deformed and distorted; but we must do our duty. This, I believe, is the last scene of my public life; and it shall, like those which have preceded it, be performed with candor and truth. Yes, my noble friends, [addressing himself to the federal senators near him,] we shall soon part to meet no more. But, however separated, and wherever dispersed, we know that we are united by just principle and true sentiment—a sentiment, my country, ever devoted to you, which will expire only with expiring life, and beat in the last pulsation of our hearts!

Mr. President, my object is peace. I could assign many reasons to show that this declaration is sincere. But can it be necessary to give this Senate any other assurance than my word? Notwithstanding the acerbity of temper which results from party strife, gentlemen will believe me on my word. I will not pretend, like my honorable colleague, Mr. Clinton, to describe to you the waste, the ravages, and the horrors of war. I have not the same harmonious periods, nor the same musical tones; neither shall I boast of Christian charity, nor attempt to display that ingenuous glow of benevolence, so decorous to the cheek of youth, which gave a vivid tint to every sentence he uttered; and was, if possible, as impressive even as his eloquence. But, though we possess not the same pomp of words, our hearts are not insensible to the woes of humanity. We can feel for the misery of plundered towns, the conflagration of defenceless villages, and the devastation of cultured fields. Turning from these features of general distress, we can enter the abodes of private affliction, and behold the widow weeping, as she traces, in the pledges of connubial affection, the resemblance of him whom she has lost for ever. We see the aged matron bending over the ashes of her son. He was her darling; for he was generous and brave; and therefore his spirit led him to the field in defence of his country. We can observe another oppressed with unutterable anguish; condemned to conceal her affection; forced to hide that passion, which is at once the torment

and delight of life: she learns that those eyes, which beamed with sentiment, are closed in death; and his lip, the ruby harbinger of joy, lies pale and cold, the miserable appendage of a mangled corpse. Hard, hard indeed, must be that heart, which can be insensible to scenes like these; and bold the man who dare present to the Almighty Father a conscience crimsoned with the blood of his children!

Yes, sir, we wish for peace; but how is that blessing to be preserved? I shall repeat here a sentiment I have often had occasion to express. In my opinion, there is nothing worth fighting for but national honor: for, in the national honor is involved the national independence. I know that a state may find itself in such unpropitious circumstances, that prudence may force a wise government to conceal the sense of indignity. But the insult should be engraven on tablets of brass, with a pencil of steel. And when that time and chance, which happen to all, shall bring forward the favorable moment, then let the avenging arm strike home. It is by avowing and maintaining this stern principle of honor, that peace can be preserved. But let it not be supposed, that any thing I say has the slightest allusion to the injuries sustained from France, while suffering in the pangs of her revolution. As soon should I upbraid a sick man for what he might have done in the paroxysms of disease. Nor is this a new sentiment: it was felt and avowed at the time when these wrongs were heaped upon us, and I appeal for the proof to the files of your secretary of state. The destinies of France were then in the hands of monsters. By the decree of heaven she was broken on the wheel, in the face of the world, to warn mankind of her folly and madness. But these scenes have passed away. On the throne of the Bourbons is now seated the first of the Gallic Cæsars. At the head of that gallant nation is the great, the greatest man of the present age. It becomes us well to consider his situation. The things he has achieved compel him to the achievement of things more great. In his vast career, we must soon become objects to command attention. We, too, in our turn, must contend or submit. By submission we may indeed have peace, alike precarious and ignominious. But is this the peace which we ought to seek? Will this satisfy the just expectation of our country? No. Let us have peace, permanent, secure, and, if I may use the term, independent—peace which depends not on the pity of others, but on our own force. Let us have the only peace worth having—a peace consistent with honor.

A gentleman near me, Mr. Jackson, has told us the anecdote of an old courtier, who said, that the interest of his nation, was the honor of his nation. I was surprised to hear that idea from that gentleman. But it was not his own. Such is that gentleman's high sense of his personal honor, that no interest would induce him to sacrifice it. He would not permit

the proudest prince on earth to blot or soil it. Millions would not purchase his honor, and will he feel less for the honor of his country? No, he will defend it with his best blood. He will feel with me, that our national honor is the best security for our peace and our prosperity: that it involves at once our wealth and our power. And in this view of the subject, I must contradict a sentiment which fell from my honorable colleague, Mr. Clinton. He tells us, that the principle of this country is peace and commerce. Sir, the avowal of such principle will leave us neither commerce nor peace. It invites others to prey on that commerce, which we will not protect, and share the wealth we dare not defend. But let it be known, that you stand ready to sacrifice the last man, and the last shilling in defence of your national honor, and those, who would have assailed, will beware of you.

Before I go into a minute consideration of this subject, I will notice what the gentlemen, opposed to me, have said on the law of nations. But I must observe, that, in a conjuncture like the present, there is more sound sense, and more sound policy in the firm and manly sentiments, which warm the hearts of my friends from Delaware, than in all the volumes upon all the shelves of the civilians. Let us, however, attend to the results of those logical deductions which have been made by writers on the law of nations: The honorable member from Kentucky, Mr. Breckenridge, has told us, that sovereigns ought to show a sincere desire of peace, and should not hastily take offence; because it may be, that the offensive act was the result of mistake. My honorable colleague has told us, that among the justifiable causes of war, are the deliberate invasions of right, and the necessity of maintaining the balance of power. He has told us further, that attempts should always be made to obtain redress by treaty, unless it be evident, that redress cannot be so obtained. The honorable member from Georgia, near me, informs us, that the thing we would obtain by war should be important, and the success probable, and that war should be avoided until it be inevitable. The honorable member from Maryland, Mr. Wright, has explained to us the case cited by the gentleman from Kentucky, as being that of a wrong, done by a private citizen. Under the weight of all this authority, and concurring with gentlemen in these their positions, I shall take leave to examine the great question we are called on to decide. I shall moreover fully and entirely agree with the honorable member near me in another point. He has, with the usual rapidity of his mind, seized the whole object. He tells us, and he tells us truly, that the island of Orleans and the two Floridas are essential to this country. They are joined, says he, by God, and sooner or later we must and will have them. In this clear and energetic statement I fully agree; and the greater part of what I have to say, will be but a commentary on the doctrines

they have advanced, an elucidation of their positions, and the confirmation of that strong conclusion.

In order to bring this extensive subject within such bounds, as may enable us to take a distant view of its several parts, I shall consider, first, the existing state of things: secondly, the consequence to the United States of the possession of that country by France: thirdly, the consequence to other nations: fourthly, the importance of it to France herself: fifthly, its importance to the United States if possessed by them; and having thus examined the thing itself in its various relations, the way will be open to consider, sixthly, the effect of negotiation; and then, seventhly, the consequences to be expected from taking immediate possession.

Before I consider the existing state of things, let me notice what gentlemen have said in relation to it. The honorable member from Kentucky has told us, that indeed there is a right arrested, but whether by authority or not, is equivocal. He says the representative of Spain verily believes it to be an unauthorized act. My honorable colleague informs us, there has been a clashing between the governor and the intendan. He says, we are told by the Spanish minister it was unauthorized. Notwithstanding these assurances, however, my honorable colleague has, it seems, some doubts; but, nevertheless, he presumes innocence; for my colleague is charitable. The honorable member from Maryland goes further; he tells us the minister of Spain says, the intendant had no such authority; and the minister of France too, says there is no such authority. Sir, I have all possible respect for those gentlemen, and every proper confidence in what they may think proper to communicate. I believe the Spanish minister has the best imaginable disposition to preserve peace; being indeed the express purpose for which he was sent among us. I believe it to be an object near to his heart, and which has a strong hold upon his affections. I respect the warmth and benevolence of his feelings, but he must pardon me that I am deficient in courtly compliment; I am a republican, and cannot commit the interests of my country to the goodness of his heart.

What is the state of things? There has been a cession of the island of New Orleans and of Louisiana to France. Whether the Floridas have also been ceded is not yet certain. It has been said, as from authority, and I think it probable. Now, sir, let us note the time and the manner of this cession. It was at or immediately after the treaty of Luneville, at the first moment when France could take up a distant object of attention. But had Spain a right to make this cession without our consent? Gentlemen have taken it for granted that she had. But I deny the position. No nation has a right to give to another a dangerous neighbor without her consent. This is not like the case of private citizens, for there, when a man is injured he can resort to the tribunals for redress;

and yet, even there, to dispose of property to one, who is a bad neighbor, is always considered as an act of unkindness. But as between nations, who can redress themselves only by war, such transfer is in itself an aggression. He who renders me insecure, he who hazards my peace, and exposes me to imminent danger, commits an act of hostility against me, and gives me the rights consequent on that act. Suppose Great Britain should give to Algiers one of the Bahamas, and contribute thereby to establish a nest of pirates near your coasts, would you not consider it as an aggression? Suppose, during the late war, you had conveyed to France a tract of land along the river Hudson and the northern route by the lakes into Canada, would not Britain have considered and treated it as an act of direct hostility? It is among the first limitations to the exercise of the rights of property, that we must so use our own as not to injure another; and it is under the immediate sense of this restriction that nations are bound to act toward each other.

But it is not this transfer alone: there are circumstances, both in the time and in the manner of it, which deserve attention. A gentleman from Maryland, Mr. Wright, has told you, that all treaties ought to be published and proclaimed for the information of other nations. I ask, was this a public treaty? No. Was official notice of it given to the government of this country? Was it announced to the President of the United States, in the usual forms of civility between nations who duly respect each other? It was not. Let gentlemen contradict me if they can. They will say, perhaps, that it was the omission only of a vain and idle ceremony. Ignorance may, indeed, pretend, that such communication is an empty compliment, which, established without use, may be omitted without offence. But this is not so. If these be ceremonies, they are not vain, but of serious import, and are founded on strong reason. He who means me well, acts without disguise. Had this transaction been intended fairly, it would have been told frankly. But it was secret because it was hostile. The first consul, in the moment of terminating his differences with you, sought the means of future influence and control. He found and secured a pivot for that immense lever, by which, with potent arm, he means to subvert your civil and political institutions. Thus, the beginning was made in deep hostility. Conceived in such principles, it presaged no good. Its bodings were evil, and evil have been its fruits. We heard of it during the last session of Congress, but to this hour we have not heard of any formal and regular communication from those by whom it was made. Has the King of Spain—has the First Consul of France, no means of making such communication to the President of the United States? Yes, sir, we have a minister in Spain; we have a minister in France. Nothing was easier, and yet nothing has been done. Our first magistrate has been treated

with contempt; and through him our country has been insulted.

With that meek and peaceful spirit, now so strongly recommended, we submitted to this insult, and what followed? That which might have been expected; a violation of our treaty—an open and direct violation by a public officer of the Spanish government. This is not the case cited from one of the books. It is not a wrong done by a private citizen; which might, for that reason, be of doubtful nature. No; it is by a public officer—that officer, in whose particular department it was to cause the faithful observance of the treaty which he has violated. We are told, indeed, that there was a clashing of opinion between the Governor and the Intendant. But what have we to do with their domestic broils? The injury is done, we feel it. Let the fault be whose it may, the suffering is ours. But, say gentlemen, the Spanish minister has interfered to correct this irregular procedure. Sir, if the Intendant was amenable to the minister, why did he not inform him of the step he was about to take, that the President of the United States might seasonably have been apprised of his intention, and given the proper notice to our fellow-citizens? Why has he first learned this offensive act from those who suffer by it? Why is he thus held up to contempt and derision? If the Intendant is to be controlled by the minister, would he have taken a step so important without his advice? Common sense will say no. But, the bitter cup of humiliation was not yet full. Smarting under the lash of the Intendant, the minister soothes you with kind assurances, and sends advice boats to announce your forbearance. But while they are on their way, new injury and new insult are added. The Intendant, as if determined to try the extent of your meekness, forbids to your citizens all communication with those who inhabit the shores of the Mississippi. Though they should be starving, the Spaniard is made criminal who should give them food. Fortunately, the waters of the river are portable, or else we should be precluded from the common benefits of nature, the common bounty of heaven. What then, I ask, is the amount of this savage conduct? Sir, it is war—open and direct war. And yet gentlemen recommend peace, and forbid us to take up the gauntlet of defiance. Will gentlemen sit here and shut their eyes to the state and condition of their country? I shall not reply to what has been said respecting depredations on commerce, but confine myself to objects, of which there can be no shadow of doubt. Here is a vast country given away, and not without danger to us. Has a nation a right to put these States in a dangerous situation? No, sir. And yet it has been done, not only without our consent previous to the grant, but without observing the common forms of civility after it was made. Is that wonderful man, who presides over the destinies of France, ignorant or unmindful of these forms? See



what was done the other day. He directed his minister to communicate to the elector of Bavaria, his intended movements in Switzerland, and their object. He knew the elector had a right to expect that information, although the greater part of Swabia lies between his dominions and Switzerland. And this right is founded on the broad principles already mentioned.

As to the depredations on our commerce, they are numerous, and of great importance; but my honorable colleague has told us, our merchants are in a fair way of getting redress. I own, sir, I am surprised at this information, which is, I presume, a state secret, communicated from the executive department. My honorable colleague, who is the pattern of discretion, who was the monitor, and threatened to be the castigatour of those, who, from treachery or weakness, might betray or divulge the secrets of the Senate, cannot possibly allude to any thing on our files. He has, therefore, received this information from some other quarter, and I feel myself much obliged by his kind communication. But he must pardon me, sir, that until it comes forward in some body, shape, or condition, which I can grasp, I am compelled to withhold my faith.

Having thus examined the existent state of things, I proceed to consider the consequence to the United States, resulting from the possession of that country by France. To this effect, I shall suppose the Floridas to be included in her newly acquired dominion, and shall state what I conceive to be the conduct which she will pursue. She will, I presume, consider herself as not bound by our treaty with Spain. Declaring this to the inhabitants of the western country, and repelling the claim of right, she will, as matter of favor, give them unlimited freedom of trade to and from New Orleans. At that place, she will eventually raise a considerable duty on exports, to pay the expense of her garrisons, and of the civil administration. But, to compensate this, she will probably give an exclusive privilege of commerce to her colonies, and obtain from Spain and Holland similar privileges. Under these circumstances, let us examine the general and particular consequences to this, our country.

The general consequences are those which affect our commerce, our revenue, our defence, and what is of more importance even than these, our union. Your commerce will suffer, because you will no longer hold the means of supplying the West India Islands, subject to your single control; and because all the export from New Orleans, being, of course, in French bottoms, your navigation will be proportionably diminished. Your revenue will suffer as much as your commerce. The extensive boundary of more than two thousand miles, will be stocked with goods for the purpose of contraband trade. The inhabitants will naturally take their supplies in that way. You must, therefore, multiply your revenue officers and their assistants, and while your receipt diminishes, the expense

of collection will be increased. As to what regards your defence, it is evident, that the decrease of your navigation and revenue, must narrow your means of defence. You cannot provide the same force, either by land or by sea; but the evil does not stop here. With this country in your possession, you have means of defence more ample, more important, more easy, than any nation on earth. In a short time, all the West India Islands, fed from your granaries, must depend on your will. And, in consequence, all the powers of Europe, who have colonies there, must court your friendship. Those rich sources of commercial importance will be, as it were, in your hands. They will be pledges for the amity of others, in seas and dominions far remote. It is a defence, which, though it costs you nothing, is superior to fleets and armies. But let the resources of America be divided, which must happen when the French are masters of New Orleans, and all this power and influence are gone. One-half of your resources will be in their hands, and they will laugh at your feeble attempts with the other half. It is the interest of this country, that the possessions of European powers in the West Indies should be secured to them; and in this view of the subject, it is important that the Island of St. Domingo should be subjected by France; it would, therefore, have been wise to have aided in that subjugation. There is, indeed, a special reason for it beyond the considerations of external policy. That event will give to your slaves the conviction, that it is impossible for them to become free. Men, in their unhappy condition, must be impelled by fear, and discouraged by despair. Yes—the impulsion of fear must be strengthened by the hand of despair! Consider, moreover, your condition in the wars which are most likely to happen. These must be either with France or England. If with France, your interior is ruined: if with England, the commerce of the Atlantic States will be distressed, and that of the western country too, though not perhaps in so great a degree. Thus let the war be with whichever of those nations it may, one-half of the United States must be peculiarly injured; and in all cases, it will be difficult for them to assist each other. The interior has no seamen for naval defence; the seaboard can send few, if any troops, beyond the mountains. This powerful influence of one nation on one great division of our country, and of another nation on the remainder, will tend to disunite us. The ridge of mountains will mark the line of distinct interests. The effect of those differing interests will be felt in your councils. It will find its way to this floor. This must be the case so long as man is man. Look, I pray, at those nations. The enmity of France and England can terminate only by the subjection of one to the dominion of the other. It must be by the complete exertion of force, and the utter impossibility of resistance. They are the Rome and Carthage

of modern times. Their implacable spirit will stimulate them to attempt a division of this country, by sentiments of hatred, deadly as their own. These efforts will, I hope, be vain; but with such powerful engines to operate on the interest and the will, is there not danger to that union so essential to our prosperity? There will be a constant struggle in Congress as to the kind of public force which ought to be maintained. The one part will desire an army, the other a navy. The unyielding spirit of party, will, perhaps, prevent the support of either; leaving the nation completely defenceless, and thereby increasing the power of those who may influence or command our destinies. For, let it be remembered, that a nation without public force, is not an independent nation. In a greater or smaller degree, she will receive the law from others.

Having thus considered the effect of this cession upon the United States, in a general point of view, let us now examine it more particularly, as it regards the greater divisions of our country; the western, the southern, the middle, and the eastern States. I fear, sir, I shall detain you longer than I intended, certainly longer than the light of day will last, notwithstanding my effort to comprise what I have to say in the smallest compass. As to the western States, the effects will be remote and immediate. Those more remote may be examined under the two-fold aspect of peace and war. In peace, they will suffer the diminution of price for their produce. The advantage of supplying the French, Dutch, and Spanish colonies, may, at first sight, lead to a different opinion: but when the port of New Orleans is shut to all but French ships, there will no longer be that competition which now exists, and which always results in the highest price that commodities can bear. The French merchants have neither the large capital, nor have they the steady temper and persevering industry which foster commerce. Their invariable object in trade is, to acquire sudden wealth by large profit; and if that cannot be done, they abandon the pursuit for some new project. Certain of the market, and certain of the increasing supply, they will prescribe the price, both to those who cultivate, and to those who consume. Such will be the effect in peace. In a war with England, the attention of her fleets to cut off supplies from her enemies, must necessarily affect the price of produce in a still greater degree; and in a war with France, it will bear no price at all, until New Orleans shall be wrested from their grasp. Add to this the danger and the devastation from the troops of that country, aided by innumerable hosts of savages from the western wilds. Such being the evident effects to be produced in times not far remote, the present evil follows from the anticipation of them. The price of land must be reduced, from the certainty that its produce will become less valuable. The flood of emigration to those fertile regions must cease to

flow. The debts, incurred in the hope of advantageous sales, must remain unpaid. The distress of the debtor must then recoil on his creditor, and, from the common relations of society, become general.

What will be the effect on the southern States? Georgia, Carolina, and the Mississippi territory are exposed to invasion from the Floridas and New Orleans. There are circumstances in that portion of America which render the invasion easy, and the defence difficult. Pensacola, though the climate be warm, is among the healthiest spots on earth. Not only a large garrison, but an army may remain there without hazard. At Pensacola and St. Augustine, forces may be assembled to operate in that season of the year, when the morasses, which separate them from our southern frontier, no longer breathe pestilence. By what are those armies to be opposed? Will you call the militia from the north to assist their southern brethren? They are too remote. Will you, to secure their seasonable aid, bring them early to the fields they are ordered to defend? They must perish. The climate, more fatal than the sword, will destroy them before they see their foe. The country, adjoining to our southern frontier, is now in possession of the most numerous tribes of savages we are acquainted with. The access to it from New Orleans and the Floridas is easy and immediate. The toys and gewgaws manufactured in France, will be scattered in abundance, to win their affections and seduce them from their present connexion. The talents of the French to gain the good will of the savages, is well known, and the disposition of those uncultured men for war, is equally notorious. Here then is a powerful instrument of destruction, which may be used against you with ruinous effect. Besides, what is the population of the southern States? Do you not tremble when you look at it? Have we not, within these few days, passed a law to prevent the importation of certain dangerous characters? What will hinder them from arriving in the Floridas, and what can guard the approach from thence to our southern frontier? These pernicious emissaries may stimulate, with a prospect of freedom, the miserable men who now toil without hope. They may excite them to imitate a fatal example, and to act over those scenes which fill our minds with horror. When the train shall be laid; when the conspiracy shall be ripe, when the armies of France shall have reached your frontier, the firing of the first musket will be a signal for general carnage and conflagration. If you will not see your danger now, the time must soon arrive when you shall feel it. The southern States being exposed to such imminent danger, their representatives may be made to know, that a vote, given in Congress, shall realize the worst apprehensions. You will then feel their danger even on this floor.

Such being the probable result as to the southern, what will it be to the middle States?

Their trade to the West India Islands is gone the moment that country is in possession of the French. England, to whose dominions alone they can have recourse for the vent of their produce, and the purchase of their supplies, will confine that commerce to her own ships. I say, the moment the French are in possession of New Orleans, your West India trade is gone. I do not mean that this effect will be sudden as a flash of lightning, but it will be gone in a few years, which may be considered as a moment when compared with national existence. You will then be dependent for that trade on the good will of England; and, as your navigation decreases, your dependence will be still greater, because you will rely on her navy for your protection. I again repeat, that when it shall be a question in your councils whether you will have a navy, the increasing weight of the western country will be thrown into the scale of opposition. They will insist on an army for their protection. My honorable colleague has expressed his fears from a standing army. Sir, your present negligence will put you under the necessity of having such an army, and expose you to all the consequences to be apprehended from it. You may, indeed, remain united in a body as one nation, but with such contrariant interests and opinions, with sentiments and views so different, it will be a large and languishing body, without a soul.

To the eastern States, when separately considered, this may appear a matter of less moment than to the other great divisions of our country. But they will perceive in it the loss of their navigation; they will see the theatre of their industrious exertions contracted; they will feel the loss of the productions of that western world in the mass of their commercial operations; and above all, they will feel the loss of an ample resource for their children. These western regions are peculiarly their heritage. It is the property of the father's of America, which they hold in trust for their children. The exuberant population of the eastern States, flows in a steady stream to the western world, and if that be rendered useless, or pass under the dominion of a foreign power, the fairest hope of posterity is destroyed. The time may come, and I fear it will come, when those who cross the mountains, will cross the line of jurisdiction. Whether we consider, therefore, this object in its relations to our general policy, or examine its bearings on the greater divisions of our country, we find ample reason to agree with the gentleman near me, that New Orleans and the Floridas must not be separated from the United States.

Let us now consider the consequence of the cession we complain of, to other nations; and this we may do generally, and then more especially as to those who have a direct and immediate interest in the transaction. In a general view, the first prominent feature is the colossal power of France. Dangerous to Europe and to the world, what will be the effect of a great

increase of that power? Look at Europe. One half of it is blotted from the list of empire. Austria, Russia, Prussia, and Britain, are the only powers remaining, except Sweden and Denmark, and they are paralyzed. Where is Italy, Switzerland, Flanders, and all Germany west of the Rhine? Gone, swallowed up in the empire of the Gauls! Holland, Spain, Portugal, reduced to a state of submission and dependence! What is the situation of the powers that remain? Austria is cut off from Italy, the great object of her ambition for more than three centuries; long the rival of France, long balancing with the Bourbons the fate of Europe, she must now submit, and tacitly acknowledge to the world the superiority of her foe, and her own humiliation. Prussia, under the auspices of the great Frederick, was at the head of a Germanic league to balance the imperial power. Though united with Austria for a moment in the hollow league of the coalition, she has, like Austria, been actuated by a blind jealousy, and favoring the operations of France, for the ruin of her rival, expected to share largely in the general spoil. In this fond hope she is disappointed; she now sees the power of France at her door. There is not a fortress from the Rhine to the Baltic, except Magdeburg, which the first consul may leave on his left. The fertile plains near Leipsic, contain the magazines for his armies, when he shall think proper to march to Berlin. Westphalia and lower Saxony are open on the side of Flanders and Holland. The Maine presents him a military road to the borders of Bohemia. By the Necker he approaches Ulm, and establishes himself on the Danube. These rivers enable him to take the vast resources of his wide domain to the point where he may wish to employ them. Menacing at pleasure his neighbors, he is himself secured by a line of fortresses along his whole frontier. Switzerland, which was the only feeble point of his defence, and which separated his Gallic and Italian dominions, has lately been subjected. The voice you now hear, warned the Swiss of their fate more than eight years ago. The idea seemed then extravagant; but realized, it appears but as a necessary incident. Russia is deprived of her influence in Germany, and thereby of a principal instrument by which her policy might operate on the great powers of the south. The Germanic body is, indeed, in the hand of the first consul. Three new electors along the Rhine are under the mouths of his cannon. They dare not speak—speak! None dare speak; they dare not think any thing inconsistent with his wishes. Even at their courtly feasts they sit like Damocles, destruction suspended over their heads by a single hair. Would you know the sentiment of England? Look at the debates in the two houses of Parliament; they speak their fears. Such being the general sentiment of Europe, can it be supposed that they will view, without anxiety, a new extension of that power and dominion, the object of their hatred and apprehension?

Will it be said, that there is a security to the freedom of mankind from the moderation with which this enormous power is to be exercised? Vain delusion! This power is not the result of accident. At the moment when France dethroned her sovereign, it was easy to foresee that a contest must ensue, in which her existence would be staked against the empire of the world. If not conquered by surrounding princes, (and the hope of such conquest, unless by the aid of her own citizens, was idle,) her numerous armies, acquiring discipline, must eventually conquer. She had the advantages of situation, and those which result from union, opposed to councils uncertain and selfish. It was easy also to foresee, that, in the same progress of events, some fortunate soldier would seat himself on the vacant throne: for the idea of a French republic was always a ridiculous chimera. Bonaparte has placed himself at the head of that nation by deeds which cast a lustre on his name. In his splendid career, he must proceed. When he ceases to act, he will cease to reign. Whenever in any plan he fails, that moment he falls. He is condemned to magnificence. To him are forbidden the harmonies and the charities of social life. He commands a noble and gallant nation passionately fond of glory. That nation stimulates him to glorious enterprise, and because they are generous and brave, they ensure his success. Thus the same principle presents at once the object and the means. Impelled by imperious circumstances, he rules in Europe, and he will rule here also, unless by vigorous exertion you set a bound to his power.

Having thus cast a rapid glance on the general state of Europe, it remains to look particularly at the condition of England and Spain, so far as they may be affected by the cession of those provinces to France. England will see in it an increase of commerce and naval force for her rival. She will see imminent danger to her islands, and particularly to Jamaica. The climate of Pensacola has already been noticed. The position is of incalculable moment. During the sickly and hurricane season, fleets and armies may wait there in safety, till their enemy shall be enfeebled and unprotected. Where will the British fleets and armies be stationed with equal advantage? If they ask an asylum in your ports, you must refuse; for, should you listen to any such proposition, your kindness would be considered as a hostile aggression. The influence of France on the United States, which has already been noticed, will give double weight to her representations. And this very influence is among the effects which Britain must deprecate. I have not time to dwell on this subject, nor many others as fully as I ought. The condition of Spain is not less worthy of notice. No two nations on earth have more rooted hatred for each other than France and Spain. There are none more different in essential points of character. United, however, under sovereigns of the same family,

these antipathies were wearing away. But the fatal stroke which destroyed the French monarch has severed that band. Force has since produced not union, but submission. It is not in nature, that the Spanish king should foster kindly sentiments for him who has decked himself in the spoil of his house. The proud, the brave and the loyal Castilian groans under the yoke which galls him, but which he cannot break, and sickens at the recollection of his ancient glory. His deep resentments are known, and it is to prevent their effects that he has been compelled to make the cession of those provinces. France will then hold at her discretion the Spanish treasures, and the rich provinces of the new world. At the first symptom of hostile sentiment, she arrests the means of aggression. Thus the dependence of Spain is rendered absolute, and her chains are riveted for ever. Does Spain behold this state of things with calm indifference? No: she feels all the pangs of wounded pride, driven to the necessity of perpetuating its own humiliation.

A few words, after what has already been said, will suffice to show the importance of those provinces to France. This results from the influence on her rival, on Spain, and on the United States, by means of the position, the resources and the means of aggression which those provinces afford. Enough has been said of the position. The resources are great and increasing. Not only cotton and indigo will be furnished for her manufactures, but supplies and subsistence for her colonies and her troops. These resources, too, will be at the very point most important, both for defence and aggression. The same force will be ready to operate either against England, Spain, or America. Thus that force will be tripled in its moral effect, and influence alike the conduct of all against whom it may be directed. To what has been said on the facility with which we may be assailed, I might add much, but it is unnecessary. It behoves us, however, to consider well the spirit of the French government, which, in all its changes, has never lost sight of this object. The French minister M. de la Luzerne, when Congress were deliberating on the ultimata for peace, obtained a resolution that our ministers should, as to our western boundary, treat under the dictation of France. Our ministers disdained the condition, and refused to obey. Their manly conduct obtained for you the countries, whose fate is now suspended on your deliberations. Never, no never, has France lost sight of Louisiana. Never for a moment has she been blind to its importance. Those, who, driven from her bosom into exile, wandered about among us, have gathered and communicated the fullest information. While they enjoyed your hospitality, they probed your weakness, and meditated the means of controlling your conduct. Whatever may be the fair appearances, rely on it, that every Frenchman bears with him every where, a French heart;

and so he ought. I honor him for it. O, that Americans had always an American heart.

It remains to notice the advantage of this country to the United States, as it may relate to our power, our peace, our commerce, and above all, to our freedom. As to our power, something has already been said on the peaceful influence, which results from the dependence of colonies belonging to the great nations of Europe: add to this, that the product of those colonies must pass by our doors and be exposed to our cruisers. A further advantage is to be found in the ready means of invasion, in concert with the troops of others, if driven to the necessity of war. The possession of power will give us, not only security, but peace. Peace indeed can never be safe but by the aid of power. Our disposition is pacific. It is our interest to be at peace, and the form of our government, while it secures to us the enjoyment of as much liberty as is possible, renders it particularly imprudent to risk, in war, any change of the constitution. Grant us these provinces, and we can dictate the conditions of our commerce with the islands. Possessed of them, it will be doubly lucrative, and without them, wholly uncertain. There is another stream of profitable trade which will then flow in our channels. The risk and difficulty which Spain experiences in bringing home her treasures, when she is at war, will naturally suggest the advantage of remitting them through this country. The produce of the Mexican mines may then be shipped directly to Asia. It will be paid for to Spain by bills on the commercial nations, and thus furnish to her the easy means of obtaining the supplies she may stand in need of. The bullion will be so much the more valuable, as the danger and expense of transportation are diminished. This, therefore, would have a beneficial result upon the whole commercial world. It would more especially emancipate Spain from her present thralldom. It would give a happy change to all her interior administration, and increase both her absolute and relative force. Let me say here, that it is our interest to preserve the authority of Spain over her American territory. We have enough of our own. We can have no wish to extend our dominions. We want men, not land. We are, therefore, the natural and the safe guardians of Spain. On us she may rely with perfect confidence. We can derive from that commerce, which it is her interest to permit, all the advantage we ought to ask for.

But great as are the benefits which will result from the possession of the Floridas and New Orleans, great as is their tendency to advance our power, secure our peace, and extend our commerce, there is a consideration, in comparison with which, commerce, peace and power, are of but slight avail. These provinces will fortify the defences of our freedom. My honorable colleague has stated to you his apprehensions of standing armies. And yet, sir, if we be not possessed of this territory, stand-

ing armies become necessary. Without an imposing military force, the inhabitants of the western country will be in such immediate danger, that they must league with a neighbor who will have every thing to offer, and from whom they will have every thing to fear. This will lead to the worst of all wars, to civil war. And when that shall happen, liberty will soon be lost. The army, which has defeated one half the nation, will easily lend itself to enslave the other. Such is the history, and such will ever be the fate of man. In this view, then, above all others, is that possession most precious. When it is in our hands, we need no standing army. We can turn our whole attention to naval defence, which gives complete security, both at home and abroad. When we have twenty ships of the line at sea, (and there is no good reason why we should not have them,) we shall be respected by all Europe. The sense of security resulting from such force, must give a new spring to industry and increase the stock of national wealth. The expense, compared with the benefit, is moderate, nay trifling. And let me here say one word as to national expense. Sir, whatever sums are necessary to secure the national independence, must be paid. They will not amount to one half of what it must cost us to be subdued. If we will not pay to be defended, we must pay for being conquered. There is no medium, and but the single alternative. In the proper expenditure for defence, therefore, is true economy; and every pitiful saving, inconsistent with that object, is the worst, the most profligate profusion.

Having now considered in its various relations, the importance of these provinces, the way is open to estimate our chance of obtaining them by negotiation. Let me ask, on what ground you mean to treat. Do you expect to persuade? Do you hope to intimidate? If to persuade, what are your means of persuasion? Every gentleman admits the importance of this country. Think you the first consul, whose capacious mind embraces the globe, is alone ignorant of its value? Is he a child, whom you may win by a rattle to comply with your wishes? Will you, like a nurse, sing to him a lullaby? If you have no hope from fondling attentions and soothing sounds, what have you to offer in exchange? Have you any thing to give which he will take? He wants power: you have no power. He wants dominion: you have no dominion; at least none that you can grant. He wants influence in Europe. And have you any influence in Europe? What, in the name of heaven, are the means by which you would render this negotiation successful? Is it by some secret spell? Have you any magic power? Will you draw a circle and conjure up devils to assist you? Or do you rely on the charms of those beautiful girls with whom, the gentleman near me says, the French grenadiers are to incorporate? If so, why do you not send an embassy of women? Gentlemen talk of the

principles of our government, as if they could obtain for us the desired boon. But what will these principles avail? When you inquire as to the force of France, Austria, or Russia, do you ask whether they have a *habeas corpus* act, or a trial by jury? Do you estimate their power, discuss their interior police? No! The question is, How many battalions have they? What train of artillery can they bring into the field? How many ships can they send to sea? These are the important circumstances which command respect and facilitate negotiation. Can you display these powerful motives? Alas! Alas! To all these questions you answer by one poor word—confidence—confidence—confidence—yea, verily, we have confidence. We have faith and hope: aye, and we have charity too. Well—go to market with these Christian virtues, and what will you get for them? Just nothing. Yet in the face of reason and experience, you have confidence: but in whom? Why, in our worthy President. But he cannot make the treaty alone. There must be two parties to a bargain. I ask if you have confidence also in the first consul? But whither, in the name of heaven, does this confidence lead, and to what does it tend? The time is precious. We waste, and we have already wasted moments which will never return. You have already tried negotiation. I say you have tried it, because I know you have a minister in France, and I am sure the first magistrate of our country cannot have been so negligent as not to pay attention to a subject which is confessedly of such magnitude. You have, then, negotiated: and with what success? Why, instead of defeating the cession, you have closed the river. Instead of obtaining any advantage by a new treaty, you have lost the benefit of an old one. Such are the results of your negotiation in Europe. In this country, you have negotiated to get back the privilege you are robbed of: and what follows? A prohibition to touch their shores. Instead of restoring the rights of treaty, they cut you off from the rights of humanity. Such is your splendid success from negotiation; and yet gentlemen tell us, we must continue to negotiate. The honorable member from Kentucky says, that great lengths are gone in inquiring into, and rectifying the irregular procedure. He tells us, a minister is just appointed, and it would, therefore, be inconsistent to fight just now: that moreover it would degrade the President's authority, and defeat his measures. The gentleman from Georgia says, we have no right to go to war till there shall be a refusal on the part of Spain; and my honorable colleague assures us, that if our wrongs are redressed by negotiation, we can have no complaint. As to the lengths which are gone, it is for those gentlemen to appreciate their value, who know what they are. I profess my ignorance, and judging by effects, must withhold my confidence. If we must wait for a pointed refusal, before we do ourselves right, I venture to predict a delay

fatal to the peace of this country. But, sir, what is it we are to ask, the refusal of which will justify war? Is it, as my honorable colleague supposes, a mere restitution of a privilege wrongfully taken away? Sir, I answer in the words of the resolutions moved by my friend: "It does not consist with the dignity of this country, to hold a right so important by a tenure so uncertain." But the honorable member from Maryland has told us, that we need not cross the Atlantic to seek for precedents, that we have enough on our own archives; and he has had the goodness to mention our humble petitions presented to the king of Great Britain, in 1775. We sent, says he, petition after petition. I am sure that honorable member has no wish that a minister should be sent to bear our humble petition to the footstool of the first consul's throne. But, sir, whether we treat or pray, it will end as it did in 1775, by war, unless we are determined to give up that independence which we then fought to establish. Let us consider, a moment, the natural course of this negotiation. It is the interest of France to foster in us a hope from treaty, until she has put herself in a condition to frustrate all other hope. There can be no question, therefore, that she has avoided, and will avoid a direct refusal. And as long as we are content to accept of smooth speeches, general assurances, vague assertions, and loose evasions, we shall have no want of that court currency. But why, it may be said, has she not already taken possession? Because her original plans have been greatly deranged. St. Domingo presented obstacles unexpected, and that enterprise must not be abandoned; for though the island may not in itself be of much consequence, though it must be ruined before it can be conquered, yet conquered it must be, for the world must continue to believe, that the first consul cannot fail in what he has undertaken. Much of his power rests on that opinion, and it must, therefore, be maintained. But there are other incidents besides those of St. Domingo, which have had the same tendency. There followed, on the general peace, a serious discussion of the German indemnities; then the affairs of Italy; lately of Switzerland; and during the whole momentous period, it was doubtful how far England would bear a continued invasion of the liberties of Europe. And it was evident, that should the war recommence with England, the force sent to this country would be totally lost. It was important, therefore, to gain time and for that very reason, we should have insisted on an immediate decision. Such, then, is the state of this treaty so fondly desired—a treaty, by which we are to ask much and offer nothing—a negotiation, in which we have no means to persuade. Have we any to intimidate? Where is your public force? You have none; and seem resolved not to have or use any. My honorable colleague tells us, that war will increase our debt one hundred millions, and that our people are not fond of taxes. He

says we are trying a new experiment to pay our debts in a given period, which war would derange. It would injure, moreover, our pacific character, and might draw down the jealousy of all nations who have colonies. He believes that three-fourths of our people are opposed to war; but yet he thinks that nine months hence we shall be in a better condition. What is the effect of this language? Is it not to convince the adverse party that he has nothing to fear from a refusal? As to this experiment for the payment of our debts, whether it has the merit of novelty I shall not inquire; but I am bold to assert, that the merit, be it what it may, is due to one of my worthy friends who formerly administered our finances. The same plan, also, has been adopted by another great statesman, Mr. Pitt, who has for many years past provided regularly a fund to liquidate, in a given period, each debt which his nation has incurred. But does England trust her safety to the protection of her sinking fund? No. She has fifty thousand seamen employed, and a hundred thousand soldiers. These form the shield of her defence. A gentleman near me has told us, that in case of war, our mercantile capital is exposed in every part of the world. To this I answer, first, that the same objection will apply with equal weight upon any and every occasion. But further, I say, the argument is directly and completely against him. How does it stand? He admits, that if negotiation fails, he will draw the sword. He goes further, and says he will throw away the scabbard. Now, sir, it is clear that if we operate at once, notice may be given to our merchants. Advices may be sent in season to every sea. And here let me say, that it is a duty of the government to apprise both our insurers and shippers of their dangerous situation. It is unwise as well as unjust to lull them into a fatal security. But suppose the treaty shall fail, and remember that the success or failure depends on Bonaparte; he will weigh the present declarations and act accordingly. He will commence a war on your commerce, long before you know that war exists. I say, therefore, the argument is directly against the gentleman who used it. And here let me say one word on the comparative merits of the resolutions on your table. Those moved by my honorable friend, give the President command not only of the militia, but of the naval and military force. They place money at his disposal, and what is most important, they put it in his power to use these efficient means. The resolutions moved as an amendment, authorize, indeed, a call for a greater number of militia, but when called they can do nothing but consume their rations. There is no power to bring them into action, and of course the expense is useless, even for the purpose of influence.

Having endeavored to show, that we have no hope from treaty, it only remains to consider the natural effect of taking an immediate possession. Against this measure it has been

said, that war, instead of giving relief, will absolutely shut up the Mississippi. That a single seventy-four in the mouth of that river would stop it effectually. I believe, sir, it would not only stop, but turn it; for a seventy-four would run aground and obstruct the channel. But what is the amount of these observations? The gentlemen all agree, that if they cannot obtain their object without war, they will fight for it. The mischief they deprecate must therefore arrive, unless there be a well grounded hope from treaty; and the only difference is, that they are willing to take a longer term of sufferance, because they have a stronger expectation of relief without the exertion of force. I have no such expectation. I shall, therefore, proceed to consider what will follow, if we take possession without a previous alliance with Britain, or with such an alliance. I have heard it urged in conversation, that such alliance should first be made, and, therefore, I think it proper to take up the subject in debate. I cannot, however, but remark on the different language now held, from that which we heard a year ago. Then it was the fashion to say, we had nothing to do with other nations. And when a man of plain sense observed, that this disposition was of little avail, because other nations would have something to do with us; and when the particular danger we now see was pointed out; oh! then, to be sure, there was nothing to apprehend from our dear sister republic! I censure no man for adopting other and wiser principles. I have no question, but that as gentlemen proceed in the business of government, they will see the folly of many other fanciful notions, but I must entreat them not to fly from one extreme to the other. I hesitate not to give my opinion, that we ought to take possession without consulting Great Britain. And having done so, let us declare to France, that we mean to live with her in perfect amity. Let us offer every assistance in our power to conquer and preserve St. Domingo. Let us show her, that we have done an act of mere defence. Let us prove our pacific disposition by declaring, that we are under the tie of no obligation to her rival. To Spain let us hold a similar language. Let us point out her present danger and demonstrate the utility of our possession. To both, let us offer to relinquish our claims for spoiliations on our commerce and pay our own merchants. We can well afford to purchase with that price, a price paid to ourselves. Finally, if our representations do not produce the desired effect, let us tell them that we will ally ourselves to England, and aid in the conquest of all their American dominions. Sir, this language will be listened to. Rely on it, that, under such circumstances, neither France nor Spain dare send hither a single regiment or a single ship. The existence of the British naval force will alone produce all the effect you could ask from its operation. But what are we to hope from a delay until an alliance shall be made? What



will be the stipulations of the treaty of alliance? These may be more or less onerous or pernicious. Certainly the British minister will not hazard the fate of his nation without the hope of some correspondent advantage. One stipulation is certain. We must agree to continue the war until a peace can be obtained by common consent: and this is precisely the stipulation which we ought not to make, if it can be avoided; because we shall then be no longer masters of our exterior relations. To this it may be objected, that we cannot expect aid from Britain without a previous treaty. I ask, what reliance you have for aid with treaty? The answer is, that it will be her interest. And, sir, it is her interest to give that aid without treaty.

I have now gone through this tedious discussion. I have trespassed on your patience more than I wished, although, from the lateness of the hour, much has been omitted of what I ought to have said. I have endeavored to show, that, under the existing circumstances, we are now actually at war, and have no choice but manly resistance or vile submission; that the possession of this country by France is dangerous to other nations, but fatal to us; that it forms a natural and necessary part of our empire; that, to use the strong language of the gentleman near me, it is joined to us by the hand of the Almighty, and that we have no hope of obtaining it by treaty. If, indeed, there be any such hope, it must be by adopting the resolutions offered by my honorable friend. Sir, I wish for peace; I wish the negotiation may succeed, and therefore I strongly urge you to adopt these resolutions. But though you should adopt them, they alone will not insure success. I have no hesitation in saying, that you ought to have taken possession of New Orleans and the Floridas, the instant your treaty was violated. You ought to do it now. Your rights are invaded, confidence in negotiation is vain: there is, therefore, no alternative but force. You are exposed to imminent present danger: you have the prospect of great future advantage: you are justified by the clearest principles of right: you are urged by the strongest motives of policy: you are commanded by every sentiment of national dignity. Look at the conduct of America in her infant years. When there was no actual invasion of right, but only a claim to invade, she resisted the claim; she spurned the insult. Did we then hesitate? Did we then wait for foreign alliance? No—animated with the spirit, warmed with the soul of freedom, we threw our oaths of allegiance in the face of our sovereign, and committed our fortunes and our fate to the God of battles. We then were subjects. We had not then attained to the dignity of an independent republic. We then had no rank among the nations of the earth. But we had the spirit which deserved that elevated station. And now that we have gained it, shall we fall from our honor?

Sir, I repeat to you that I wish for peace: real, lasting, honorable peace. To obtain and secure this blessing, let us, by a bold and decisive conduct, convince the powers of Europe that we are determined to defend our rights; that we will not submit to insult; that we will not bear degradation. This is the conduct which becomes a generous people. This conduct will command the respect of the world. Nay, sir, it may rouse all Europe to a proper sense of their situation. They see, that the balance of power, on which their liberties depend, is, if not destroyed, in extreme danger. They know that the dominion of France has been extended by the sword over millions who groan in the servitude of their new masters. These unwilling subjects are ripe for revolt. The empire of the Gauls is not, like that of Rome, secured by political institutions. It may yet be broken. But whatever may be the conduct of others, let us act as becomes ourselves. I cannot believe, with my honorable colleague, that three-fourths of America are opposed to vigorous measures. I cannot believe that they will meanly refuse to pay the sums needful to vindicate their honor and support their independence. Sir, this is a libel on the people of America. They will disdain submission to the proudest sovereign on earth. They have not lost the spirit of '76. But, sir, if they are so base as to barter their rights for gold, if they are so vile that they will not defend their honor, they are unworthy of the rank they enjoy, and it is no matter how soon they are parcelled out among better masters.

My honorable friend from Pennsylvania, in opening this debate, pledged himself and his friends to support the executive government if they would adopt a manly conduct. I have no hesitation to renew that pledge. Act as becomes America, and all America will be united in your support. What is our conduct? Do we endeavor to fetter and trammel the executive authority? Do we oppose obstacles? Do we raise difficulties? No. We are willing to commit into the hands of the chief magistrate the treasure, the power and the energies of the country. We ask for ourselves nothing. We expect nothing. All we ask is for our country. And although we do not believe in the success of treaty, yet the resolutions we move, and the language we hold, are calculated to promote it.

I have now performed, to the best of my power, the great duty which I owed to my country. I have given that advice which in my soul I believe to be the best. But I have little hope that it will be adopted. I fear that, by feeble counsels, we shall be exposed to a long and bloody war. This fear is, perhaps, ill-founded, and if so I shall thank God that I was mistaken. I know that, in the order of his Providence, the wisest ends frequently result from the most foolish measures. It is our duty to submit ourselves to his high dispensations. I know that war, with all its misery, is not



wholly without advantage. It calls forth the energies of character, it favors the manly virtues, it gives elevation to sentiment, it produces national union, generates patriotic love, and infuses a just sense of national honor. If, then, we are doomed to war, let us meet it as we

ought; and when the hour of trial comes, let it find us a band of brothers.

Sir, I have done, and I pray to Almighty God that this day's debate may eventuate in the prosperity, the freedom, the peace, the power and the glory of our country.

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ORATION ON HAMILTON.

This oration was pronounced at the porch of the old Trinity Church, over the body of General Hamilton, at the time of its interment, July 14th, 1804.\*

If on this sad, this solemn occasion, I should endeavor to move your commiseration, it would be doing injustice to that sensibility, which has been so generally and so justly manifested. Far from attempting to excite your emotions, I must try to repress my own; and yet, I fear, that, instead of the language of a public speaker, you will hear only the lamentations of a wailing friend. But I will struggle with my bursting heart, to portray that heroic spirit, which has flown to the mansions of bliss.

Students of Columbia—he was in the ardent pursuit of knowledge in your academic shades, when the first sound of the American war called him to the field. A young and unprotected volunteer, such was his zeal, and so brilliant his service, that we heard his name before we knew his person. It seemed as if God had called him suddenly into existence, that he might assist to save a world!

The penetrating eye of Washington soon perceived the manly spirit which animated his youthful bosom. By that excellent judge of men, he was selected as an aid, and thus he became early acquainted with, and was a principal actor in the more important scenes of our revolution. At the siege of York, he pertinaciously insisted on, and he obtained the command of a Forlorn Hope. He stormed the redoubt; but let it be recorded that not one single man of the enemy perished. His gallant troops, emulating the heroism of their chief, checked the uplifted arm, and spared a foe no longer resisting. Here closed his military career.

Shortly after the war, your favor—no, your discernment, called him to public office. You sent him to the convention at Philadelphia; he there assisted in forming that constitution, which is now the bond of our union, the shield of our defence, and the source of our prosperity. In signing the compact, he expressed his apprehension that it did not contain sufficient means

of strength for its own preservation; and that in consequence we should share the fate of many other republics, and pass through anarchy to despotism. We hoped better things. We confided in the good sense of the American people; and, above all, we trusted in the protecting providence of the Almighty. On this important subject he never concealed his opinion. He disdained concealment. Knowing the purity of his heart, he bore it as it were in his hand, exposing to every passenger its inmost recesses. This generous indiscretion subjected him to censure from misrepresentation. His speculative opinions were treated as deliberate designs; and yet you all know how strenuous, how unremitting were his efforts to establish and to preserve the constitution. If, then, his opinion was wrong, pardon, O! pardon that single error, in a life devoted to your service.

At the time when our government was organized, we were without funds, though not without resources. To call them into action, and establish order in the finances, Washington sought for splendid talents, for extensive information, and above all, he sought for sterling, incorruptible integrity. All these he found in Hamilton. The system then adopted, has been the subject of much animadversion. If it be not without a fault, let it be remembered that nothing human is perfect. Recollect the circumstances of the moment—recollect the conflict of opinion—and, above all, remember that a minister of a republic must bend to the will of the people. The administration which Washington formed was one of the most efficient, one of the best that any country was ever blest with. And the result was a rapid advance in power and prosperity, of which there is no example in any other age or nation. The part which Hamilton bore is universally known.

His unsuspecting confidence in professions, which he believed to be sincere, led him to trust too much to the undeserving. This exposed him to misrepresentation. He felt himself obliged to resign. The care of a rising family, and the narrowness of his fortune, made it a duty to return to his profession for their support. But though he was compelled to abandon public life, never, no, never for a moment did he abandon the public service. He never lost sight of your interests. I declare to you, be-

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\* See New York Evening Post, July 16th, 1804; and Coleman's Collection of Facts, relative to the death of Hamilton, page 41.

fore that God, in whose presence we are now especially assembled, that in his most private and confidential conversations, the single objects of discussion and consideration were your freedom and happiness. You well remember the state of things which again called forth Washington from his retreat to lead your armies. You know that he asked for Hamilton to be his second in command. That venerable sage well knew the dangerous incidents of a military profession, and he felt the hand of time pinching life at its source. It was probable that he would soon be removed from the scene, and that his second would succeed to the command. He knew by experience the importance of that place—and he thought the sword of America might safely be confided to the hand which now lies cold in that coffin. Oh! my fellow-citizens, remember this solemn testimonial that he was not ambitious. Yet he was charged with ambition, and wounded by the imputation, when he laid down his command, he declared, in the proud independence of his soul, that he never would accept of any office, unless in a foreign war he should be called on to expose his life in defence of his country. This determination was immovable. It was his fault that his opinions and his resolutions could not be changed. Knowing his own firm purpose, he was indignant at the charge that he sought for place or power. He was ambitious only for glory, but he was deeply solicitous for you. For himself he feared nothing; but he feared that bad men might, by false professions, acquire your confidence, and abuse it to your ruin.

Brethren of the Cincinnati—there lies our chief! Let him still be our model. Like him, after long and faithful public services, let us cheerfully perform the social duties of private life. Oh! he was mild and gentle. In him

there was no offence; no guile. His generous hand and heart were open to all.

Gentlemen of the bar—you have lost your brightest ornament. Cherish and imitate his example. While, like him, with justifiable, and with laudable zeal, you pursue the interests of your clients, remember, like him, the eternal principle of justice.

Fellow-citizens—you have long witnessed his professional conduct, and felt his unrivalled eloquence. You know how well he performed the duties of a citizen—you know that he never courted your favor by adulation or the sacrifice of his own judgment. You have seen him contending against you, and saving your dearest interests, as it were, in spite of yourselves. And you now feel and enjoy the benefits resulting from the firm energy of his conduct. Bear this testimony to the memory of my departed friend. I charge you to protect his fame. It is all he has left—all that these poor orphan children will inherit from their father. But, my countrymen, that fame may be a rich treasure to you also. Let it be the test by which to examine those who solicit your favor. Disregarding professions, view their conduct, and on a doubtful occasion ask, Would Hamilton have done this thing?

You all know how he perished. On this last scene I cannot, I must not dwell. It might excite emotions too strong for your better judgment. Suffer not your indignation to lead to any act which might again offend the insulted majesty of the laws. On his part, as from his lips, though with my voice—for his voice you will hear no more—let me entreat you to respect yourselves.

And now, ye ministers of the everlasting God, perform your holy office, and commit these ashes of our departed brother to the bosom of the grave.

## ROBERT GOODLOE HARPER.

Of those learned and eloquent men, who belonged to the Maryland bar, during the latter portion of the last and the beginning of the present century, no one was more justly celebrated than General Harper. He was a native of Spottsylvania county, Virginia, where he was born in the year 1765. His parents removed, during his childhood, to Granville, in North Carolina. From this time until his appearance in the American service as a soldier in a troop of horse under General Greene, the record of his life is wanting. He was then but fifteen years old. At the age of twenty he entered the College of New Jersey, at Princeton, where, while perfecting his course, he acted as a tutor to some of the less advanced classes. In September, 1785, he received his first degree, choosing as the subject of his discourse, *The Proper Objects of Education*.\*

Soon after leaving college he embarked for Charleston, South Carolina, and after experiencing a boisterous and stormy passage, arrived at that place, "a stranger, with only a few dollars in his possession." Through the kindness of a gentleman, of whose son he had been a teacher while at Princeton, he was enabled to enter upon the study of law. So rapid was his improvement that he commenced practice in a year, and with a view of obtaining a larger sphere for his professional operations, he removed to the interior of the State. Here he became distinguished as a powerful political writer, and at a later period, was elected to the legislature of the State. On his retirement from this office, he was delegated to the lower house of the United States Congress, in which body he gained the enviable distinction of being an "earnest supporter of the measures of Washington, and a devoted, fearless friend of his country."

In the animated and protracted discussion which followed the publication of the Treaty of 1794, General Harper took a prominent part: During the winter of the next year he published an elaborate address to his constituents, giving his reasons for approving the measure. After pointing out its merits, and answering with ability the objections of its opponents, he concludes:—"Such are the reasons which have induced me to believe, that the treaty in question is 'proper and expedient.' \* \* \* \* \*

Whenever it comes before us I shall give my voice for its going fully into effect; convinced that it is consistent with the honor and conducive to the interest and happiness of my country; of that country among whose citizens and whose sons it is my boast and my pride to be numbered, and to which it is my highest ambition to be useful." †

In May, 1797, he published his *Observations on the Dispute between the United States and France*, and during the same month delivered a masterly speech on the necessity of resisting the encroachments of the latter nation. He continued in Congress during the three succeeding years, when, on the accession of President Jefferson, he retired for a time from public life; and, having married the daughter of Charles Carroll of Maryland, he removed to that State, and settled at Baltimore. Here he again commenced the practice of the law. His great professional qualifications were now brought into operation. In 1805, he was associated with Luther Martin

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\* See New Jersey Gazette, of October 10th, 1785.

† Select Works of Robert Goodloe Harper, vol. 1, page 41.

and Joseph Hopkinson, as counsel for Judge Chase, in the celebrated trial which resulted in the acquittal of that officer on all the charges in his impeachment.

In 1812, he was a member of the House of Representatives, from his adopted State. The following year he delivered the eulogistic speech in honor of the Russian victories, and soon after another similar oration on the *Recent Triumphs of the Cause of Mankind in Germany*.\* About this time he held the rank of General, and distinguished himself honorably, in repelling the attack of the British on Baltimore.

In the colonization of Africa, he took an active interest. One of the reports of the Society formed for that object, which was prepared by him, contains an elaborate exposition of the merits of the system. He viewed the plan of colonization as the only method by which the mischiefs of slavery could be lessened, and cherished the hope, that the day would come when the scourge of slavery would no longer be felt in the land, when the rod of chastisement should be withdrawn, and all voices should join in the song of freedom. "The alarming danger of cherishing in our bosom a distinct nation," he says, "which can never become incorporated with us, while it rapidly increases in numbers, and improves in intelligence; learning from us the arts of peace and war, the secret of its own strength, and the talent of combining and directing its force; a nation which must ever be hostile to us, from feeling and interest, because it can never incorporate with us, nor participate in the advantages we enjoy; the danger of such a nation in our bosom needs not to be pointed out to any reflecting mind. It speaks not only to our understanding, but to our very senses; and however it may be derided by some, or overlooked by others, who have not the ability or the time, or do not give themselves the trouble, to reflect on and estimate properly the force and extent of those great moral and physical causes, which prepare gradually, and at length bring forth, the most terrible convulsions in civil society; it will not be viewed without deep and awful apprehensions by any who shall bring sound minds, and some share of political knowledge and sagacity, to the serious consideration of the subject. Such persons will give their most serious attention to any proposition which has for its object the eradication of this terrible mischief, lurking in our vitals."†

In 1824, Mr. Harper advocated, in a powerful speech, the connection of the waters of the Ohio and the Chesapeake, by a canal through the District of Columbia. This speech was soon after published, together with a reply to some of the objections of the opponents of the scheme. The welfare of his adopted city always won his earnest attention, and although actively employed in his professional duties, he became identified with every project of public utility which was devised to increase the power and prosperity of the State.

On the fourteenth of January, 1825, he died. "He dropped down dead," says Wirt, "and it is said by his physician, died probably before he reached the floor. He had no recent warning of the approach of death: on the contrary, he had been unusually well for some time past. On Thursday (the day previous to his decease), he was well in court, and made one of the best arguments he ever made in his life—an argument three hours long. I met him again in the afternoon, at a watchmaker's, and he told me that he did not experience the slightest inconvenience from his exertions in speaking in the morning, and that he never felt better. That night he was at a ball, and, I am told, was uncommonly gay and agreeable. On Friday morning he was again well, and had eaten his breakfast as usual, and was standing up before the fire, reading a newspaper, when death struck him, in the manner I have mentioned."‡ His death was deeply felt in the community in which he had lived, at the bar of which he was such a distinguished ornament; and the nation mourned one of its purest and most enlightened patriots.§

\* This speech was delivered at Annapolis, Maryland, on the 20th of January, 1814, and subsequently published.

† Annual Report of the American Society for Colonizing the Free People of Color of the United States, 1823. North American Review, vol. 18, page 62.

‡ Extract from a letter of William Wirt to his daughter, written two days after the death of General Harper.—*Kennedy's Life of Wirt*, vol. 2, page 195.

§ See Washington National Journal of January 17th, 1825.

## THE AGGRESSIONS OF FRANCE.

In 1797, after the refusal of the French Directory to receive Mr. Pinckney, the minister of the United States, President Adams called an extra session of Congress to take the subject into consideration. On the sixteenth of May of that year, he delivered a speech before both Houses of Congress, in which he expressed in strong terms his great disapprobation of the indignity offered to the United States; and on the twenty-second day following, an answer to his speech was reported in the House of Representatives, responding to his sentiments. An amendment, however, was proposed, expressive of an opinion that the House viewed the conduct of the Directory as less reprehensible than it had been represented by the President, and recommending conciliatory measures as the basis of the negotiations about to be entered into with France.

On the twenty-ninth of May, the amendment being under consideration, Mr. Harper spoke as follows :

MR. CHAIRMAN : At the time the interruption took place on Saturday, by the unfortunate indisposition of the Speaker, I had drawn near to the close of those observations, with which at that time I intended to trouble the committee. I shall now resume, as nearly as possible, the same train of remarks, and bring them to a conclusion as speedily as possible. As more time, however, is now afforded to me, I will take a range somewhat more extensive than I had prescribed to myself on the former day, endeavoring, at the same time, to avoid every thing, not strictly relative to the question on the amendment, now under consideration.

Mr. Harper here observed, that he should go a little out of his way, in order to notice and refute some positions laid down by gentlemen in favor of the amendment, which, though wholly irrelevant to the present question, would have a tendency, if allowed to pass uncontradicted, to render the people discontented with the government. Having concluded his remarks upon this subject, he proceeded thus :

The scope and object of this amendment is to recommend it to the President, to offer certain concessions to France, in the negotiations which he has declared it his intention to commence. These concessions are understood to relate to the list of contraband, which is more extensive, as stated by the British treaty, than

in that of France; and to the right of taking enemies' goods out of neutral ships, which Britain enjoys, and France by her treaty with us has given up. In these two points, it is the scope and object of the amendment to recommend, that the two nations should be placed on the same footing. Hence the amendment is to be considered under two points of view; first, the recommendation itself; and secondly, the thing recommended.

As to the recommendation itself, I ask, is it constitutional—is it useful—is it politic?

With respect to its constitutionality, every body knows, that the power of negotiation is given wholly to the President by the constitution, and that of making treaties to the President and Senate. Can the House of Representatives control or direct that power? Can it instruct the President in matters, which the constitution has intrusted solely and exclusively to his judgment? Shall it undertake to instruct him—will he be bound to obey those instructions? Should he think fit to pursue a different course, will the House be justified by the constitution and their duty in withholding supplies, and in leaving the country without defence? Do gentlemen foresee the dilemma, which they are preparing for themselves and for the House? a dilemma in which they must choose between pride and duty, between supporting the executive in measures adopted against their advice, and leaving the country defenceless, at the mercy of all who may choose to assail it? What possible effect can this interference have, but to lay the foundations of a schism between the different departments of government?

But admitting such a recommendation to be conformable to the constitution, in what is it useful? Is it to dispose the executive to treat? If so, it is useless, for he already has that disposition, and has strongly declared it in his speech to both Houses. He has declared it as his resolution "to institute a fresh attempt at negotiation, and to promote and accelerate an accommodation, provided one can be made on terms compatible with the rights, duties, interests, and honor of the nation." He has declared, that if we have committed "errors, and these can be demonstrated, we shall be willing to correct them. If we have done injuries, we shall be willing, on conviction, to redress them." Can there be a spirit more conciliatory—or would gentlemen wish to see the negotiations conducted on other principles?

Is it to give information to the executive, to point out the course which the public good requires to be taken? But do gentlemen imagine that the executive is ignorant of the public interests, or less acquainted with it than the House? Is it not notorious that bodies of this kind are always unfit for negotiation? Have not the people declared it, by placing that

power in the hands of the President? Can gentlemen suppose, that the House possesses, or can possess, all the information necessary, in forming an opinion about what ought to be given, and what ought to be required, in a negotiation with another nation? Can the House foresee all that may happen, to render this offer inexpedient, or useless, or unnecessary—to justify other offers, or to make demands necessary, instead of offers of any kind? What will become of the power of negotiation in the executive, if the House is first to instruct him, and afterwards to censure him?

Some gentlemen have seemed to think, that this amendment would give weight to the negotiation abroad; would strengthen the hands of the executive, and place him on higher ground. But how is this effect to be produced? By showing, it is answered, that, in making this offer, all the branches of government are united, and that the ground thus taken will be firmly supported. But must it not be perfectly evident, that the best way of giving this impression is, to pursue a conduct and hold a language, which will evince a perfect confidence in the Executive, and a determination to support him with the whole force and resources of the country? Then it is, that the offers of the executive will come with weight, when they come with evidence of union in the government, and of mutual confidence among the various departments.

Some gentlemen have supported this amendment on the ground, that it will give confidence to the people of this country in the executive; and one gentleman from Virginia, Mr. Nicholas, has gone so far as to say, that the people of this country will not support the government, unless its measures are right. Admitting this opinion to be true (and I am inclined to think it may be), still it will remain to be inquired, by what means and on what standard the people would form their opinion of the propriety and wisdom of the measures pursued by their government. Not certainly from the declarations of that gentleman or his friends; because there has not been one measure adopted by the government, since its formation, which they have not opposed in the House and out of it, on which they have not set the stamp of their most decided censure; and yet, sir, we have seen all these measures supported and approved of by the people. We have seen the late President, who was in a peculiar manner the author of them, under whose auspices they were adopted and established, in spite of the most violent and persevering opposition from these very gentlemen—we have seen him surrounded with applauses, with gratitude, and with thanks, from every quarter of the Union; we have seen the wisdom and firmness of his administration made one very principal ground of these thanks and applauses; and even in a former House of Representatives, where the principles of these gentlemen did so greatly preponderate, when they moved to strike out of an address to this

great man, a clause expressly approving his administration, as wise, firm, and greatly beneficial to his country, the motion was overruled by a very large majority; and when the address itself, containing this obnoxious clause, was put to the vote, it passed with only twelve nays. Yet gentlemen talk to us, as if they were the standard, by which the people would measure the conduct of government! Sir, the people are not truly estimated by those gentlemen. They are not the blind, ignorant herd, which those gentlemen take them to be. They will do in future, what they have always done heretofore—they will judge of the measures of government by the measures themselves, and by the just confidence which they have long placed in those whom they have appointed to administer it; not by the opinions or invectives of this or that set of men, either on this floor or out of doors. Gentlemen ought to be admonished, by the frequent and always unsuccessful appeals, which they have made to the people, to give up at length this vain chimera of being able to rule public opinion, with which they have so long suffered themselves to be deluded.

I hold, sir, in my hand a paper, from that very quarter where gentlemen probably suppose, and not without appearance of reason, that their labors in the vineyard of opposition have been crowned with most success. It is an address from Mecklenburg county, in Virginia, to their representative on this floor, and contains sentiments so just, so truly patriotic, and so applicable to the point of confidence in government, that I cannot help reading it to the committee, though I am sensible it must have already attracted the notice of every individual.

Mr. Harper then read the address.

This paper, sir, affords a most consoling and honorable contrast to the speeches, which have lately been heard on this floor. It contains sentiments, which I have no doubt are reverberated from the hearts of every American in every part of the Union, and which prove how far the people, even that part of them on which these gentlemen have most particularly relied, are from sharing with them in their want of affection for the government, and of confidence in its measures. There is nothing in this address to prove, that the people in that part of the Union will refuse to support the government, unless those gentlemen should inform them that its measures were right.

I also consider the recommendation, contained in this amendment, as extremely impolitic. Is it good policy to show the enemy your eagerness to treat, your eagerness to make concessions? Is it good policy to show to France, that you have no confidence in the executive, in his wisdom, his information, his patriotic intentions; that you think it necessary to instruct and direct him? Is it good policy to send the executive trammelled to France; to send him in a situation, where he must either yield to a

part of her demands, or go against the recommendations of this House? Is this the way to give weight to his negotiations, or to lessen her demands? Is it true, that there is in this House a majority, who do not confide in the executive? I repeat the question, and I address it not to those gentlemen whose constant employment it has been, for eight years past, in the House and out of it, to oppose the executive and every measure which he was understood to favor, to declare their distrust of him, and endeavor to weaken that confidence so justly reposed in him by the people. I address not myself to these: I address myself to those gentlemen, and some such there no doubt are, who, entertaining just ideas of the constitution, and reposing full confidence in the executive, may nevertheless be inclined to favor this recommendation, because they think it a harmless thing. I could ask these gentlemen, whether there is a majority in this House, who do not think the executive worthy of confidence in the performance of his constitutional functions? I could ask them whether they are willing to make this declaration, if they do not believe it? I could ask them whether, admitting it to be true, it would be prudent to tell France so? I would ask them what, beside such a declaration, France can see in this amendment? I answer, and they must, I think, join me in the answer, that she can see nothing else. She will see in it a proof and confirmation of her present opinion; that we are a divided people; that the people are divided from the government, and the government divided within itself. This will encourage her to press and heighten her demands; for, seeing us, as she will think, divided, she will remember one part of the scripture, while she forgets all the rest, that "a house divided against itself cannot stand."

As I believe this recommendation to be unconstitutional, useless and highly impolitic, I can never give my vote in its favor.

I will now ask gentlemen, who may think the recommendation not improper, whether the measure recommended is entitled to their support? Why should it be entitled to support? Either because it is necessary, or because it is useful; because it is demanded by justice, or recommended by good policy.

If the measure were really necessary or useful, surely the executive is as well apprised of that necessity and utility, as well qualified to judge about it, as the House of Representatives; and the thing will be as well done by him alone, and will have as much effect, as if the House were to join in it: the claims of justice can be as completely satisfied in one case as in the other; the ends of policy as completely attained. Though I myself have very little reliance on the usefulness of the measure, and no conviction of its necessity, still I, for one, am perfectly willing that it should be tried by the executive, and perfectly willing that it should be effected, if the executive think fit. Neither

have I any doubt that it will be tried. The very debate in this House will inform the executive of the propriety of trying it; and I have no doubt, moreover, that the executive is disposed to make the attempt, to offer these advantages to France. I know nothing directly of the opinion of the executive, but I know, that those who are about the executive have this opinion, and are disposed to make this offer to France, not perhaps in the unqualified and unconditional manner recommended by some gentlemen, but on terms consistent with the honor and interests of this country, and with which the public, when it comes to be informed of them, will be satisfied. I, therefore, even if I thought this measure not only useful but necessary, should still leave it most willingly to the President. But as there are gentlemen in the House, who may be inclined to favor the recommendation from an opinion, that the measure recommended is necessary or useful, I will address some considerations to them, by which they may, perhaps, be induced to doubt whether it is either the one or the other.

First, I ask them, how this measure, this concession to France, can be necessary? Do gentlemen contend, that this country is too weak to defend her rights; that it must yield to the demands of a foreign power, merely because those demands are made? I have not so understood them. Suppose as their language has been, and submissive as their course of policy seems calculated to become, they have not yet bent thus low. But they have contended, that this concession is necessary, because it is right; because justice requires it. And how does justice require it? Because, according to them, having yielded these rights to England by our treaty with her, impartial justice requires, that we should yield them also to France.

This argument rests on the ground that Britain does not possess these rights by the law of nations, which point gentlemen have taken much pains, and made many elaborate dissertations, to establish. I shall not follow them through this long diplomatic discussion, which is much better suited to the department of State, and has there been handled in a very masterly and satisfactory manner. I believe, that when the official paper on this subject, lately published from the department of State, shall be read and compared with the speeches of gentlemen, very little doubt will remain on the point. I have another reason, too, for avoiding a dispute on the law of nations. Gentlemen seem disposed to treat the law, and the writers on it, with as little respect as the one and the other have received from the nation whose cause they advocate. One minister of that nation, in this country, has declared those writers to be no better than worm-eaten volumes, whose contents he was happy to have forgotten. Another, at Genoa, declared, that the French had taken up arms for the express purpose of subverting the law of nations. After this I should be almost afraid to cite writers

on the law of nations, lest I should be told, "that they are worm-eaten volumes." There is, however, one authority on this point, which, perhaps, may be acknowledged, and which I will therefore adduce. It is the marine code of France herself; from which it appears, that by the law of nations, and her own laws founded upon it, enemies' goods are liable to capture in neutral ships.

Sir, it appears from Valin, vol. ii., page 250, that on the twenty-first of October, 1744, the king of France published a regulation, "concerning prizes made at sea, and the navigation of neutral vessels in time of war." The first, second, third, and fourth articles specify all the cases in which neutral ships in time of war may sail, free from molestation. Then comes the fifth article, which is in these words: "If in any of the cases specified in the first, second, third, and fourth articles of this regulation, there shall be found on board of the said neutral ships, to whatsoever nation they may belong, merchandise or effects, the property of his majesty's enemies, such merchandise or effects shall be good prize, even though they be not the production of the enemies' country: but the ships shall be released." This regulation continued in force till the twenty-sixth of July, 1778, when the king of France, having engaged in the American war, (for the treaty of alliance was early in February, 1778,) found it his interest to relax from the principle in hopes of prevailing on England to do so too. Accordingly on that day he published a regulation, by the first article of which, enemies' property on board of neutral ships is declared to be safe from capture by French armed vessels. The article, however, contains the following clause: "But his majesty retains to himself a right to revoke the permission contained in the present article, should the enemy powers fail to grant a similar permission within six months from the date hereof."

Hence it is clear, that France not only has asserted and long exercised this right, which she charges us with having conceded to England, but even possesses it at the present moment, and may exercise it, if she thinks fit, without violating the law of nations; she being only restrained in those cases, in which, as in ours, she has renounced it by treaties. All this appears from her own laws and public acts; for her relinquishment of this right in July, 1778, having been merely conditional and dependent on a similar relinquishment by England, which has never taken place, may be at any moment revoked, and indeed has been; for, notwithstanding all her clamors against the English for exercising this right, it is very well known that she has constantly exercised it herself from the beginning of the present war.

It may, therefore, be expected that we shall not hereafter be told by either France, or her advocates, that the right to take enemies' goods in neutral vessels, is not a right given by the law of nations.

It has, however, been contended that the law of nations in this respect has been altered by the convention of the armed neutrality. I will not stop to refute this position, which has been so often and so completely exposed; still less will I undertake to prove what is in itself so perfectly obvious, that the convention of the armed neutrality, being no more than a treaty, is confined, like all other treaties, to the parties who agree to it, and can in no manner affect the general rights of other States, under the general law of nations: but I will remark, that this objection about the armed neutrality, comes with a very bad grace from France; because France, when requested to accede to this convention of the armed neutrality, expressly declined it. She declined it, indeed, under pretence that its principles were already established by her regulation of July, 1778. This regulation, however, as has been seen, was temporary and conditional, and left France at full liberty to adhere to the law of nations, or adopt the principles of the armed neutrality, as she might afterwards find convenient. She afterwards did refuse to accede, as appears by the authority of Mr. Gibbon; in one of whose letters to Lord Sheffield, dated September 11th, 1785, and published in the first volume of his miscellaneous works, page 206, there is found this passage: "The other day the French ambassador mentioned, that the empress of Russia had proposed to ratify the principles of the armed neutrality by a definitive treaty, but that the French had declared that they would neither propose nor accept an article, so disagreeable to England."

This, sir, is a good comment on their former proceedings with respect to this right; and proves that they never meant to renounce it, though they were willing, for a short time and for a particular purpose, to suspend its exercise. It is true that France afterwards, in the years 1786 and 1787, made a treaty with Russia, in which this right was finally relinquished. The same thing is done in her treaty with England in 1786. But her having so long retained it, and her very agreement at last to give it up, proves most incontestably that she believes herself to possess it, under the general law of nations.

A dispute has arisen, whether the convention of the armed neutrality is permanent in its nature, or merely confined to the duration of the American war. I have been of the latter opinion myself, on the construction of the instrument itself, and of the acts which have grown out of it; and I shall not enter again into the discussion, which I believe to be wholly immaterial. Because, whether this convention be permanent or temporary, still it is no more than a treaty, and can have no effect on the general law of nations. I will, however, correct a mistake into which a gentleman from Pennsylvania, Mr. Gallatin, has fallen on this subject. In order to prove that the convention of the armed neutrality was permanent in its



nature, that gentleman has asserted that Portugal acceded to it after the war. But the gentleman has forgot the dates. The accession of Portugal was signed at Petersburg, July, 1782, and ratified at Lisbon, September, 1782. The ratifications were exchanged on the 21st of January, 1783. Whereas the provisional articles of peace were not signed till November 30th, 1782. The armistice for suspending hostilities took place on the 20th of January, 1783, and the definitive treaty, by which the war was really ended, was not signed till September, 1783, many months after the accession of Portugal. That accession even preceded the provisional articles by some months; and yet the gentleman from Pennsylvania has told the committee that Portugal acceded after the war.

The gentleman, however, has given up the point so strongly contended for by others on the same side of the House. He has admitted that we did not, by the treaty with England, concede to her the right respecting neutral bottoms; but he contends that we should have made no commercial treaty with her, till she had relinquished that right. I will, however, ask that gentleman and the committee, whether it is not wise to obtain the modification of a right which operates unfavorably to us, when we cannot obtain its relinquishment? Is it not wise and lawful, since we cannot prevent this operation, to render it as little injurious as possible—to lessen its inconveniences when we cannot quite remove them? This is what the treaty has done; and surely we may do this without asking the permission of France, or giving her cause of offence.

From all this it must evidently appear, that we have not conceded this right to England, since she possessed it by the law of nations; and that we have done France no injury. Consequently, justice does not require us to concede it to her. The argument of necessity, of course, falls to the ground.

Will the argument of utility avail gentlemen any better? They contend, that if not necessary, it would at least be useful to make this concession to France: that if not demanded by justice, it is at least recommended by policy. If so, it may be done by the President without our assistance or advice, and the same good effects will still result from it. But why will it be useful? Will it be valuable to France? Does she want it? Will this concession satisfy her? These are questions which, in my opinion, deserve particular and serious consideration.

In the first place, I would ask how this right can be valuable to France? We are not carriers for Britain. For many nations, indeed, we are carriers, but not for Britain, which, on the contrary, is very considerably a carrier for us. Our produce is often found in her ships—her goods very seldom in ours. Consequently, the right to take British property on board of our ships, is a right of no value to France. Her

interest—and a very powerful one it is—consists not in using the right herself, but in taking it away from England. It is not to seize English property in our ships that she is so anxious, but to make French property safe from being seized in them by the English. Could she once accomplish this point, her commerce would float safely in our ships, and England, being prohibited to touch it, would become infinitely less formidable to her. The navy of England would, in fact, become in a great degree useless to her, in a war against France; since it could not touch her commerce secured under our neutral flag, while France, having her commerce thus carried on for her, would be able to employ every ship and every sailor she possessed, in attacking and destroying the commerce and the navy of England. Thus that naval superiority, which she so much dreads, and which enables England to counterbalance her power in Europe, would be stripped of all its effects and all its terrors. It is not, therefore, wonderful that France should be so extremely anxious to deprive England of this right, or so ready to renounce it herself. It is of no use to her, and of infinite use, perhaps necessity, to England.

Accordingly it has been seen, that France, while perpetually urging us to resist the exercise of this right by England, and even quarrelling with us for not doing so, has never hinted the least desire to have it herself. She has not been slow or diffident, every body knows, in demanding what she thinks useful to herself; and it may, therefore, be most safely concluded, that since she has not demanded this, she thinks it of no use to her, and does not want it. To show us, indeed, how little she cares about it, she has taken it lately by a formal decree, and yet still continues to quarrel with us, and plunder us.

What reason, then, I would ask, is there for supposing, that France will be satisfied by this concession? Does she limit her claims to this? Some gentlemen, particularly one from Maryland, Mr. S. Smith, has said so: but does she say so? Is that gentleman in the secret of her councils, or authorized to explain her pretensions? If so, let him show his credentials. If not, the House must take the liberty of judging, not from his assertions, but from the acts of France herself; from the official papers presented by her ministers. Let the gentleman from Maryland read these papers. He will find in them a great many pretensions to which he will never submit, but not one word of this. That gentleman has said, that her decree of March 2d, wherein she takes these rights, which gentlemen are so anxious to have conceded to her, ought to overrule all her former acts, to be considered as her ultimatum, as the final declaration of her wishes, her claims, and her pretensions. If so, why continue to plunder and maltreat us since that decree? Why send away our minister? Why refuse to receive another, unless all the grievances of which she has com-

plained, and to the redress of which she thinks herself entitled, shall first be removed? Gentlemen have found in that phrase, "to the redress of which she is entitled," a wonderful restriction of all her demands, and a very conciliatory disposition. But who is to declare which are the complaints, to the redress of which she is entitled? Certainly she herself. And where is this country to look for the declaration? Certainly in the official acts of her government directed to ours, and not in decrees passed long after, nor in the speeches of members on this floor. The first of these acts is M. de la Croix's summary, delivered to our ministers at Paris, March 9th, 1796, and containing complaints against the whole British treaty, against the interference of our courts with French prizes, and against the construction, put by our government on the laws of neutrality, and on some articles of the treaty with France. Next comes the decree of July 4th, 1796, for enforcing these complaints. After that is M. Adet's fifth note of October 27th, 1796, communicating this decree; and last of all comes his manifesto, November 15th, 1796, in which all the former complaints made by himself, his predecessors and M. de la Croix, are enlarged upon and enforced. On the 12th of December following, the directory refused to receive our minister, and declared that they would, in future, receive no minister plenipotentiary from us, till all the injuries, of which they had complained, were redressed. What are the complaints here referred to? Certainly those contained in the manifesto of M. Adet: for as the directory had no doubt given him instructions, as to the manifesto and the time of publishing it, they must have known that it had been published, when they gave this answer to Gen Pinckney; and to that manifesto, and the complaints contained in it, the answer no doubt refers. As to the decree of March 2d, which gentlemen say, ought to be considered as the ultimatum of France, it did not take place till two months afterwards: and to suppose that the directory, in refusing to receive a minister on account of grievances complained of, had reference to a complaint made two months after, would certainly be to charge them with a very singular absurdity.

I cannot, therefore, be persuaded that these concessions, so much relied on by gentlemen, will satisfy France, since it is certain that they form no part of her present demands, that she never has asked for them, and that they would be of little value to her, if she had them. This conclusion is greatly strengthened by the consideration, that although she had possessed herself of these rights by the decree of July 4th, 1796, and still more formally and expressly by that of March 2d, 1797, she still continued to pillage and maltreat this country, under the pretext of other complaints; whereas, had these rights now proposed to be ceded to her, been the sole or chief object of her desires, she would have ceased to complain and plunder, as soon as she had seized them.

I should be glad to hear what use is to be made of this conclusion, If it to dissuade our government from making the offer to France? No; I, for one, wish the offer to be made, and I have no doubt, that it will be made, whether recommended by the House or not: but to dissuade the House from relying too much on the efficacy of this offer; to dissuade them from regarding this offer as in any degree an effectual mean of satisfying the demands of France, of checking her insolence, or of restraining her aggressions. To prevent them, if possible, from being led, by confidence so false, into a neglect of these decided and energetic measures of defence, on which the success of the negotiation must entirely depend. This idea, I believe, cannot be too much pressed upon the House. I conceive it to be of infinite importance in the present situation of our affairs. I am persuaded, that our only hope of avoiding war or disgrace, lies in a strict and practical attention to it. In order to enforce the more effectually its importance, I conceive, that it will be highly useful to inquire what the real wishes and objects of France are, as well as what they are not. In order to find out this, it will be proper to ask, what has been the scope of her policy in this country? And what is the ground of her anger at the British treaty? For my part, I have no doubt that the whole scope of the French policy towards this country, has been to draw it into the war against England, and the tendency of the British treaty to defeat this project, the whole ground of their animosity against that instrument. It is, in my opinion, a vain delusion, to suppose that France has conceived this mighty resentment, and is committing these unheard of outrages, on account of this or that article of a treaty, this or that advantage given to another nation, and withheld from her. It is the treaty itself, which has given her offence; and its tendency to preserve peace between this country and Britain, is the ground of that offence. If it should be asked, how this appears to have been the drift of France? I answer, that it appears, in the first place, by the instructions to Genet. These instructions have been given to the public by M. Genet himself, in order to justify his conduct in this country. They must still be fresh in the recollection of most persons; but as there may be some, who have not particularly attended to them, or have forgotten their tenor, it will not be improper to cite some of the most remarkable passages. "The executive council," says M. Genet, "are disposed to set on foot a negotiation on these foundations, (the overtures made by General Washington and Mr. Jefferson for a new treaty,) and they do not know; but that such a treaty admits a latitude still more extensive, in becoming a national agreement, in which two great nations shall suspend" (this, sir, should have been translated unite,) "their commercial and political interests, and establish a mutual understanding, to befriend the empire of liberty wherever it can

he embraced, and punish those powers who still keep up an exclusive colonial and commercial system, by declaring, that their vessels shall not be received in the ports of the contracting parties." Thus it appears, that this treaty is not only to be a commercial, but also a political union: that we are to assist in extending French principles and French influence, under the name of guaranteeing the sovereignty of the people, and befriending the empire of liberty; and that, in order to accomplish this end, we are to shut our ports against all the powers who maintain an exclusive commercial and colonial system; that is, against the English, Spaniards, Danes and Dutch. This amounts in substance, and almost in name, to an alliance offensive and defensive with France.

Lest, however, her views should be misunderstood, she has gone on, in the instructions, to explain them in a manner still more clear and explicit. "As it is possible, however," continues M. Genet, "that the false representations, which have been made to Congress of the state of our internal affairs, of the situation of our maritime force, of our finances, and especially of the storms with which we are threatened, may make her ministers, in the negotiations which citizen Genet is instructed to open, adopt a timid and wavering conduct, the executive council charges him, in expectation that the American government will finally determine to make a common cause with us, to take such steps as it will appear to him exigencies may require, to serve the cause of liberty and the freedom of the people." This passage, sir, assuredly can require no comment. In the supplementary instructions, the system is more fully developed. And indeed, the passage relative to the point under consideration is so conclusive, that I will cite it entire. These are the words: "The reciprocal guarantee of the possessions of the two nations, stipulated in the eleventh article of the treaty of 1778, can be established upon generous principles, which have been already pointed out, and shall equally be an essential clause in the new treaty, which is to be proposed." In order to understand this, it will be necessary to recollect, that the treaty of 1778 was purely defensive; so that France could not claim the guarantee in a war, in which she should be the aggressor. As she was then preparing to attack England, against which she declared war within less than a month after these instructions were signed, this defensive guarantee would not answer her purpose. She therefore evidently wished to make it offensive and defensive. For had she meant to remain on the defensive herself, the defensive guarantee would have been sufficient, and she would have wanted no other. The instructions then proceed thus: "The executive council, in consequence, recommend it especially to citizen Genet, to sound early the disposition of the American government, and to make it, the guarantee, a condition *sine qua non* of their commerce with the West Indies, so essential to

the United States. It nearly concerns the peace and prosperity of the French nation, that a people, whose resources increase beyond all calculation, and whom nature has placed so near our rich colonies, should become interested by their own engagements, in the preservation of these islands. Citizen Genet will find the less difficulty in making the proposition relished in the United States, as the great trade which will be the reward of it will indemnify them in the end for the sacrifices which they may make in the outset; and the Americans cannot be ignorant of the great disproportion between their resources and those of the French republic, and that for a long period the guarantee asked from them will be little more than nominal for them, while on our part it will be real, and we shall immediately put ourselves in a condition to fulfil it, by sending to the American ports a sufficient force to put them beyond insult, and to facilitate their communication with the islands and with France." Thus it manifestly appears, that an alliance, offensive and defensive in the war, which she meditated against England, was to be formed with France; that the object of this alliance was to be the preservation of her islands, and commercial privileges its reward; that we were to make sacrifices in the outset, and be reimbursed by these privileges; and that a French fleet was to be sent to our coast, for our protection. In other words, we were to become the carriers and servants of France, and she was to defend us against England.

This point indeed is so clear, that it has been admitted by the greater part of those, who possess any information on the subject. Many gentlemen, however, are of opinion, that when Genet was recalled, this system was given up by France. But I ask these gentlemen, what was the real motive of Genet's recall? Was it to disavow his plans, or to satisfy our complaints? Certainly not. His violent and foolish proceedings, which counteracted the plan instead of promoting it, were no doubt intended to be censured, and there probably was a disposition to coax and flatter our government, by the recall of this minister, in order to prepare it better for that insidious policy, which was to be adopted by his successors. The true cause, however, of Genet's removal was the fall of the Brissotine party, to which he had belonged; and every person connected with or employed by which, Robespierre had removed. Hence the consuls in America, against whom we never had complained, were removed, as well as the minister. But did the French government disavow the instructions or the proceedings of M. Genet? Did his successors relinquish his claims and pretensions? Certainly not. On the contrary, they were all renewed and perpetually urged by those gentlemen, who never ceased to talk to us about efficacious measures against England, about a vigorous reaction. And in the manifesto published by one of them, M. Adet, the whole of Genet's measures were ex-

pressly revived, and all his complaints renewed and enforced. Even that appeal to the people, which he was disgraced for threatening, was actually made by this manifesto.

The policy of France to draw this country into the war, appears also, from the clamor, raised by her and her partisans against the proclamation of neutrality. This clamor is fresh in the recollection of us all. Genet cried out against this proclamation; Fouchet indirectly complained of it, and Adet stigmatized it as insidious, perfidious, and "a cloak under which this country presented England with a poniard, to cut the throat of our ally." Societies passed resolutions against it; orators declaimed, and newspapers teemed with abuse. Whence all this, if the object had not been to engage us in the war? Had France, as she pretended, been desirous of our remaining in peace, whence all this rage at the measure, the only possible object of which was to preserve peace? That such was her object is moreover manifest from the measures themselves which she wished us to adopt; for it is impossible to suppose her government ignorant of the direct and necessary tendency of these measures to bring us into a quarrel with England.

In the first place, she wished us to resist and repel the right, claimed and exercised by the British government under the law of nations, of taking the property of their enemies, on board of our ships. She constantly urged us, not only to deny this right, but to resist its exercise in an efficacious manner. But could she have imagined that England would yield this right to us? She knew that the English, when France, Spain, Holland and the United States, were in arms against them alone, had refused to yield it, though pressed by the formidable combination of all the neutral powers, with the empress of Russia at their head: a combination, supported too by the united maritime strength of Prussia, Sweden and Denmark. She knew that after the American war, Russia, whose treaty with England expired in 1786, and who, as a power desirous of extending its navigation, was extremely desirous of this concession, had never been able to obtain it from England.

Sir, England has constantly refused it to the formidable fleet, the immense strength, the overbearing influence, and the wise and vigorous government of the empress of Russia. She has constantly refused it to the united solicitations of Sweden and Denmark and the Hanse towns; though she has carried on a very extensive and important commerce with all these nations. She has constantly refused it, in time of peace, to all of them. To France, indeed, she conceded it in 1780, because she gained great equivalents, and had no interest in withholding it from her; as she could never expect to be engaged in a war without having France for her enemy; and in that case the stipulation could not operate. But what did she say to those nations who might remain at peace, while she and France should be at war—such as the Russians, Swedes,

Danes, and Hanse towns? She said, "I will never relinquish this right to you; because it would enable you to become the carriers of France, whenever she is at war with me; and she will thereby be enabled, in her turn, to employ all her ships and sailors in attacking my commerce, while hers will be safe under a neutral flag." In the year 1793, indeed, when Russia entered into the coalition against France, Britain made a temporary cession to her of this right, because the reason, for which it had been withheld, could not operate, while Russia as well as England was at war with France: but even then she would not entirely relinquish it. All this France perfectly well knew; and knowing it, could she suppose that England would relinquish this right to us, who had not a single ship of war, when she had refused it to the vast force of the armed neutrality—that what she had refused to so many powerful nations she would yield to a people, who, though possessing vast resources, could not call them into action without great injury to themselves, and much delay—that what she had refused in time of peace, she would surrender in a war, where not only her success, but her very existence, depended on the support of her naval power; and surrender it too to that very nation, which possessing the greatest number of ships and sailors, was most capable of exercising the right to her injury and destruction? No, France expected no such thing. She knew, that England would not surrender the right; and when she so warmly and pertinaciously urged us to resist the exercise of it, she could have had no other view than to set the two countries to quarreling. England, she well knew, would not yield. Should we persist, a war must immediately take place.

The same, sir, will apply to the measures she wished us to adopt, respecting the impressment of seamen in our ships. It is well known, that England insists on a principle, by which all persons once her subjects always remain so, unless the right to their allegiance has been given up by the government itself. This is the case with all persons born in the United States, or settled in them at the treaty of peace. From these she claims no allegiance. But such as have come here since the treaty, she still considers as her subjects, and claims the right of treating them as such, whenever she finds them on her own territory, or on the high seas, the common territory of nations. Of this description there are numbers of sailors on board of our ships, and she claims a right to impress them. This right I do not mean to defend; I know that in its exercise it is liable to great abuse, and is particularly inconvenient to this country; but it is claimed and exercised by France herself, and by every other nation, as well as England. Yet France has constantly urged us to resist the exercise of it by England. We have done every thing in our power to induce England to renounce it, and not succeeding in that, we have taken all proper steps to remedy and prevent its abuse. But this does not satisfy France;

she urges us to resist the right itself. Why?—Because she supposes that England will yield it? No, sir, no such thing. She well knows that England will not and cannot yield it with any regard to her own safety: it being of the last importance to her in a war like the present, where she has every thing staked on her maritime exertions, to prevent her seamen from passing from hers into neutral ships, where they get better wages, lighter duty, and are free from danger. France well knows, therefore, that England will not yield this right, and this is precisely the reason why she urges us to resist it: because such a resistance must immediately produce a quarrel between Great Britain and the United States.

The same spirit is visible in her other demands; all of which tend to the same point. She wished us to adopt a construction of the treaty, that would have given her complete possession of our ports, and shut them to England. She would have armed vessels, and enlisted crews, in our country; she would have sold her prizes here; she would have taken the merchant ships of England on our shores, and in our very rivers; and our courts must not have interfered. No English ship of war could have entered our harbors, which she would not have expelled, by simply affirming, that it had made prize on her citizens, no matter whether lately or four years ago, whether in the East Indies, the West Indies, Africa or Europe. Could she have imagined, that England would see all this partiality, all these favors to its enemy, without anger and jealousy? Could she have imagined, that bitter complaints or irritating remonstrances on the part of that country, would not take place? Certainly she could not. She knew, that anger, jealousy and irritation would necessarily be excited: she knew, that a system, which, under the name of neutrality, would have all the effect of an alliance with her, must produce resentment and remonstrance on the part of England, and that these, added to the ancient animosities not yet extinguished, but heightened on the contrary by recent injuries, must speedily end in hostility.

Sir, the plan of ambition and aggrandizement, pursued by France in Europe, affords additional proofs of her policy respecting this country. I have no doubt, that any gentleman, who will carefully examine the subject, will be convinced that France deliberately attacked Austria as well as England, and of her own accord, and, in pursuance of a regular system of policy, lighted up the flames of the present war. I shall not, however, stop to examine that question, which would require a minute and tedious detail of facts, and is by no means essentially necessary in the present deliberation. Whether France began the war from projects of dominion, or was driven into it for the defence of her independence, is, in some degree, unimportant at present; since it is perfectly evident, and has indeed been admitted on all sides, that with whatever motives the war be-

gan, it has long since been a mere contest for power. In this contest, France, having detached Prussia from the alliance, enslaved Belgium, subjugated Holland, and obtained an absolute control over the government and forces of Spain, found her progress resisted by nothing but the firm, persevering courage of Austria on one side, and the vast maritime power of England on the other. Accordingly, she bent all her efforts to weaken and destroy these two powers, and left nothing unattempted to divide them. She made continual efforts to induce the Turks to fall on the house of Austria on one side, and to arm Prussia against it on the other. She offered to divide its spoils with Prussia, in order to engage the avarice and ambition of that rival power, by whose assistance she might break the strength of Austria, and then rule both, with the rest of Germany. As the fear of Russia has kept the King of Prussia in awe, and restrained his enterprises, she has left no stone unturned, to lull the new Emperor of Russia into security, and obtain his acquiescence. By thus raising up enemies against Austria on every side, and pressing upon it at the same time with her whole military force, she is attempting to compel it to relinquish a large part of its territories, and make a peace separate from England. But she constantly refuses either to give up her own conquests, or to make a peace in which both England and Austria should be included. The policy of this is obvious and important. Could she, after having stripped and weakened Austria, succeed in detaching it from England, she would be left free to turn her whole undivided force against that rival nation, so long the great object of her jealousy and hatred, and whose maritime superiority, it has been her policy, for a century, to reduce. In the mean time, she leaves nothing unattempted to accomplish this purpose; and knowing that the naval strength and pecuniary resources of the English depend on their trade, she resolves to assail their trade in all possible ways. Hence her former and recent attempts to exclude English vessels from every port. Hence her instructions to Genet to draw us into an alliance, one condition of which is to be the exclusion of English vessels from our ports. Hence her threats to Portugal of an invasion by Spain, unless English vessels are excluded from the Portuguese ports. Hence her recent attempts of the same kind on Denmark and the Hanse towns.

To the success of this project against the commerce and navy of England, the aid of the United States is of the highest importance, and is so considered by France. I have it from the highest authority, that the plan of a maritime coalition against England, was early formed by France; that to the completion of it the accession of the United States was alone wanting; and that that accession was requested and refused. The pretence of this coalition, was to reduce the exorbitant maritime power of England, and prevent her tyranny over the other

commercial states. The object of it was, and the certain effect of it if successful would have been, to break down England; by which means France, who came next to her in naval power, would have been left to reign unrivalled and uncontrolled in her stead. The United States would have been the most important member of this coalition. The great number of their ships and sailors would have enabled them to become the carriers of France, while she should employ all her maritime resources in attacking England. Their privateers also would have struck a deadly blow at the English commerce; and the use of their resources and their ports to France, would have given her a decided superiority in the West Indies, and obliged the English to send so great a force there, as greatly to weaken their operations every where else. Hence it is evident that France could have no ally so important to her, in the naval war against England, as the United States. Indeed, without their assistance, she could have no hopes of success in the West Indies. Accordingly she took steps to secure this assistance, as soon as she began to form her project against England, and has pursued them ever since with the most unwearied perseverance, and by every expedient of threats, promises, flatteries, frauds and intrigue.

It being, as I conceive, perfectly manifest from all these considerations, that the plan of France has always been to draw us into the war; the House is furnished with a ready solution of her anger against the British treaty, and a clue to all her present measures. It is evident, that her anger at the treaty has arisen entirely, from its having defeated her plan of drawing us into the war; and it will readily appear, that the whole aim and object of her present measures are to compel us to renounce it; to drive us into that quarrel with England, into which she has failed in her attempts to entice us. She must either mean this, or she must mean seriously to attack us, and drive us into a war against herself. To discover which of these is her real object, what is the true motive of her present measures, is of the utmost importance; because till that is done, it will be difficult to determine, in what manner those measures ought to be counteracted, which is the point immediately under consideration. I can never believe, that it is the intention of France seriously to attack this country, or to drive it into a war against herself. She has too much to lose and too little to gain by such a contest, to have seriously resolved on it, or even to wish it. In her counsels, I have observed great wickedness, but no folly; and it would be the extreme of folly in her to compel this country to become her enemy; especially in the present war, when we can throw so formidable a weight into the opposite scale. France well knows our power in that respect, and will not compel us to exert it. She well knows, that we possess more ships and more seamen than any country upon earth except

England alone. She well knows, that our sailors are the most brave, skilful, and enterprising in the world, and, that by arming our vessels, our commerce would soon be made to float safe from privateers; while her fleets and large ships would be kept in awe by those of England. She knows that in the late war, the State of Massachusetts alone, with its privateers, took one-third of all the merchant ships of Great Britain; and that, though she had no commerce to be attacked, these maritime materials, greatly increased since that time, would enable us, if driven to the necessity, to create speedily a formidable marine, with which we could, not only defend ourselves, but attack her possessions. She knows, that we have a population not far short of six millions, and that the martial spirit, which conducted us gloriously through the trying scenes of the late war, though dormant indeed, could not have been extinguished. She knows, that by co-operating with the English, a co-operation which must result naturally from our being driven into the war, by opening our harbors to their ships, permitting them to arm, refit and victual in our ports, to recruit among our seamen, and to employ our vessels as transports, we could give them a most decided preponderance in the American seas, under which her own colonies, and those of Spain and Holland, which she most justly considers as her own, must speedily fall.

She knows that in case of a war with us, Spain and Holland, who must be her allies, would be within our grasp. She knows that the Americans could and would lay hold of New Orleans and the Floridas, and that they are well acquainted with the road to Mexico; and she would dread that enterprising valor, which formerly led them through barren wilds and frozen mountains, to the walls of Quebec. She knows, in fine, that to drive this country into a war with her at the present juncture, would bring about that co-operation of means, and that union of interests and views between us and the English, which it has been the great object of her policy to prevent, and which she had undertaken two wars, in the course of half a century, for the sole and express purpose of breaking. It is, therefore, I think, impossible to conceive, that France means to drive or provoke us into war. Her object, in my opinion must be altogether different. It must be to compel us to renounce the British treaty, and renew all our differences with that nation, under circumstances of irritation which must speedily end in a rupture. What has led her to form this project? From whence could she derive hopes of success? She has been led to form it, in my opinion, from a persuasion, erroneous indeed, but favored by many appearances, that we are a weak, pusillanimous people, too much devoted to gain to regard our honor, too careful about our property to risk it in support of our rights, too much divided to exert our strength, too distrustful of our own

government to defend it, too much devoted to her to repel her aggressions at the risk of a quarrel, too much exasperated against England to consent to that co-operation, which must of necessity grow out of resistance to France. Various occurrences have combined to produce and confirm this persuasion, and the forbearance which our government has exercised towards herself, is not the least of them. She has seen us submit, with patience, to the insults and outrages of three successive ministers, for the very least of which, she would have sent the minister of any nation out of her country, if not to the guillotine. The minister of the Grand Duke of Tuscany, with whom France had recently concluded a treaty, learning that the daughter of Louis the Sixteenth was to be sent out of the country, requested permission to pay her a visit. This request to visit an unfortunate young lady, the near relation of his sovereign, and whose tender age no less than her sex, her virtues and her calamities, entitled her to respect, was answered by an order from the directory, to quit the territories of the republic. His expression of a wish to show one mark of regard to virtuous misfortune and suffering innocence, was considered as an affront by the government of France, and punished by the instant dismissal of the minister. Accustomed to act thus herself, how can she impute our long-suffering and forbearance, under the perpetual insolence and insults of her ministers, to any thing but weakness, pusillanimity, or a blind devotedness to herself? The conduct of gentlemen on this floor, too, has more and more confirmed her in this injurious opinion of us; has confirmed her in the erroneous persuasion, that there is a party in the very bosom of the government, devoted to her interests. I do not mean to charge gentlemen with acting under French influence. I am persuaded, that in the course they have taken, they believed themselves to be aiming at the good of their country, which they supposed might best be promoted in the manner recommended by them. But I would ask those gentlemen, and I solemnly call on them to lay their hands on their hearts and answer me—I would ask them whether the course of conduct which they have pursued, is not calculated to impress France with a belief that they are devoted to her interests, and not to those of their own country? Whether the manner in which they have always connected the interests and wishes of France with their opposition to the measures of this government, does not necessarily tend to create and confirm this belief? When she saw them constantly making it a ground of opposition to measures, that they would be hurtful or displeasing to her; constantly supporting those plans which she was desirous of seeing adopted; constantly opposing all that she opposed; what could she infer, but that they were a party devoted to her views? As she knows their numbers and importance, and has these apparently strong reasons for relying on their attachment, what

can she conclude, but, that however unable they may be to direct the government according to her wishes, they will be ready and able so to clog its operations as to prevent it from adopting or pursuing vigorous measures against her? She no doubt does believe, and there is evidence of the fact from the most respectable quarter, our minister in that country, that she has nothing to do but press hard on the government, in order to lay it, bound hand and foot, at the feet of this party, by means of which, she might then govern the country. She is further confirmed in this belief by the conduct of the people of this country, by their warm partiality for her cause and her nation, by their enthusiastic exultation in her victories, and the fond, sympathizing sorrow with which they mourn her disasters. Mistaking the source of these generous emotions, she has seen in them nothing but the proof of a slavish devotedness to herself, which would render this people incapable of asserting their own rights, when it must be done at the risk of her displeasure. She does not know, nor can she be made to understand, that it is the cause of liberty in which she is thought to be struggling, that inspires this enthusiasm, and that, should she change her conduct, and abandon the principles which she professes, these generous well-wishers would be found among the firmest of her opposers. A similar mistake she committed with respect to England, and that mistake further confirmed her original error. She saw much resentment excited by the attacks and outrages of England, and she supposed that resentment to be deep-rooted and durable. She did not know, and could not conceive, that, when England had given up her injurious pretensions for the future, and agreed to make a fair and just compensation for the past, we should forget our resentments, and cherish sentiments of mutual and friendly intercourse. She supposed these resentments to be far more deeply rooted, more universal, and more permanent, than they really are, and relies on them as a certain means of preventing any union of interests and operations between us and England, however recommended by policy or even required by necessity.

In all these delusions she is confirmed by the conduct, the speeches, and the writings, of persons in this country, both our own citizens and hers; by the information and opinions of some of her citizens, who, having resided here, have carried home with them those erroneous opinions, which foreigners generally form about countries they visit; and it is to be feared by the behavior, too, of some of our citizens in her own country, who, forgetting the trust reposed in them, and the situations in which they were placed, allowed themselves to pursue a course of conduct and conversation, calculated to confirm France in all her unfounded and injurious opinions, respecting this country. Supposing, therefore, that the people of this country are unwilling to oppose her, and the



government unable; that we should prefer peace with submission, to the risk of war; that a strong party devoted to her will hang on the government, and impede all its measures of reaction; and, that if she should place us by her aggressions in a situation, where the choice should seem to lie between a war with England and a war with her, our hatred to England, joined to those other causes, would force us to take the former part of the alternative; she has resolved on the measures which she is now pursuing, and the object of which is to make us renounce the treaty with England, and enter into a quarrel with that nation; in fine, to effect by force and aggressions, that which she had attempted in vain by four years of intriguing and insidious policy.

If such are her objects, how was she to be induced to renounce them? By trifling concessions of this, that, or the other article of a treaty; this, that, or the other advantage in trade? No. It seems to me a delusion equally fatal and unaccountable, to suppose that she is to be thus satisfied: to suppose that, by these inconsiderable favors which she has not even asked for, she is to be bought off from a plan so great and important. It seems to me the most fatal and unaccountable delusion, that can make gentlemen shut their eyes to this testimony of every nation, to this glare of light bursting in from every side; that can render them blind to the projects of France, to the Herculean strides of her overtowering ambition, which so evidently aims at nothing less than the establishment of universal empire, or universal influence, and has fixed on this country as one of the instruments for accomplishing her plan.

It is against this dangerous delusion that I wish to warn the House and the country. I wish to warn them not to deceive themselves with the vain and fallacious expectation, that the concessions proposed by this amendment will satisfy the wishes or arrest the measures of France. Do I dissuade you from these concessions? Far from it. I wish them to be offered, and in the way the most likely to give weight to the offer. It is a bridge which I am willing to build for the pride of France to retreat over; but what I wish to warn the House against is the resting satisfied with building the bridge, to the neglect of those measures by which France may be induced to march over it, after it shall be built. I wish to negotiate, and I even rely much on success; but the success of the negotiation must be secured on this floor. It must be secured by adopting firm language and energetic measures; measures which will convince France, that those opinions respecting this country, on which her system is founded, are wholly erroneous; that we are neither a weak, a pusillanimous, or a divided people; that we are not disposed to barter honor for quiet, nor to save our money at the expense of our rights: which will convince her, that we understood her projects, and are determined to oppose them, with all our resources,

and at the hazard of all our possessions. This, I believe, is the way to insure success to the negotiation; and without this, I shall consider it as a measure equally vain, weak, and delusive.

When France shall at length be convinced, that we are firmly resolved to call forth all our resources, and exert all our strength to resist her encroachments and aggressions, she will soon desist from them. She need not be told what these resources are; she well knows their greatness and extent; she well knows that this country, if driven into a war, could soon become invulnerable to her attacks, and could throw a most formidable and preponderating weight into the scale of her adversary. She will not, therefore, drive us to this extremity, but will desist as soon as she finds us determined. I have already touched on our means of injuring France, and of repelling her attacks; and if those means were less than they are, still they might be rendered all-sufficient, by resolution and courage. It is in these that the strength of nations consists, and not in fleets, nor armies, nor population, nor money: in the "unconquerable will—the courage never to submit or yield." These are the true sources of national greatness; and to use the words of a celebrated writer,—“where these means are not wanting, all others will be found or created.” It was by these means that Holland, in the days of her glory, triumphed over the mighty power of Spain. It is by these, that in later times, and in the course of the present war, the Swiss, a people not half so numerous as we, and possessing few of our advantages, have honorably maintained their neutrality amid the shock of surrounding states, and against the haughty aggressions of France herself. The Swiss have not been without their trials. They had given refuge to many French emigrants, whom their vengeful and implacable country had driven and pursued from state to state, and whom it wished to deprive of their last asylum in the mountains of Switzerland. The Swiss were required to drive them away, under the pretence that to afford them a retreat was contrary to the laws of neutrality. They at first temporized and evaded the demand: France insisted; and finding at length, that evasion was useless, they assumed a firm attitude, and declared that having afforded an asylum to those unfortunate exiles, which no law of neutrality forbade, they would protect them in it at every hazard. France, finding them thus resolved, gave up the attempt. This was effected by that determined courage, which alone can make a nation great or respectable: and this effect has invariably been produced by the same cause, in every age and every clime. It was this that made Rome the mistress of the world, and Athens the protectress of Greece. When was it that Rome attracted most strongly the admiration of mankind, and impressed the deepest sentiment of fear on the hearts of her enemies? It was when seventy thousand of her sons lay



bleeding at Cannæ, and Hannibal, victorious over three Roman armies and twenty nations, was thundering at her gates. It was then that the young and heroic Scipio, having sworn on his sword, in the presence of the fathers of the country, not to despair of the republic, marched forth at the head of a people, firmly resolved to conquer or die: and that resolution insured them the victory. When did Athens appear the greatest and the most formidable? It was when giving up their houses and possessions to the flames of the enemy, and having transferred their wives, their children, their aged parents, and the symbols of their religion on board of their fleet, they resolved to consider themselves as the republic, and their ships as their country. It was then they struck that terrible blow, under which the greatness of Persia sunk and expired.

These means, sir, and many others are in our power. Let us resolve to use them, and act so as to convince France that we have taken the

resolution, and there is nothing to fear. This conviction will be to us instead of fleets and armies, and even more effectual. Seeing us thus prepared, she will not attack us. Then will she listen to our peaceable proposals; then will she accept the concessions we mean to offer. But should this offer not be thus supported, should it be attended by any circumstances from which she can discover weakness, distrust, or division, then will she reject it with derision and scorn. I view in the proposed amendment, circumstances of this kind; and for that, among other reasons, shall vote against it. I shall vote against it, not because I am for war, but because I am for peace; and because I see in this amendment itself, and more especially in the course to which it points, the means of impeding, instead of promoting our pacific endeavors. And let it be remembered, that when we give this vote, we vote not only on the peace of our country, but on what is far more important, its rights and its honor.

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APPOINTMENT OF FOREIGN MINISTERS.

This speech, on the constitutional powers of the President and Senate, relative to the appointment of Foreign Ministers, was delivered in the House of Representatives of the United States, on the second day of March, 1798.\*

It was my wish and my hope, Mr. Chairman, when this business was again called up some days ago, after an intermission of three weeks or more, that we should at length be permitted to come to a decision, without further debate, on a question which had so long occupied the attention of the House, and already perhaps exhausted the patience of the public. I and those with whom I think on this occasion were willing, for the sake of an early decision, to pass by unanswered many things, which though susceptible in our opinion of an easy refutation, were calculated to make an impression to our disadvantage. We were even content to leave unnoticed the violent philippic of the gentleman from Virginia, Mr. Nicholas, who introduced this motion, and who, in support of it, has allowed himself so great a latitude of invective, against its opposers and their adherents. We therefore repeatedly called for the question, and did all in our power to close a debate, in which such immoderate use had already been made of the indulgence of the House.

But it did not so seem good to the gentleman from Pennsylvania, Mr. Gallatin. He yesterday pronounced a discourse of three hours and a

half long, in which he repeated assertions formerly refuted, and made them the ground of a long train of reasoning; and advanced many new positions equally untenable, but equally capable, if left undetected and unexposed, of misleading the mind. These assertions, which the gentleman from Pennsylvania has not attempted to prove, though they are the ground-work of all his reasonings, were advanced with a boldness which nothing but a belief that he was to remain unanswered could have produced. His speech, when prepared in his closet, was evidently intended for a concluding speech; and hence he has laid down positions which he knew to be unfounded, with a boldness of which even he himself has heretofore exhibited no example. On these positions he has built a gigantic structure of argument, to support the present motion; a structure which, like a vast edifice resting on loose blocks, must fall and crumble in the dust, as soon as some person shall take the trouble to discover and knock away, its frail and temporary props.

It is for this purpose that I now rise, once more to trespass on the indulgence of the committee. The loose blocks which support this edifice I mean to knock away; an operation which requires neither strength nor skill, which may be performed by any person who stands near enough to discover the defect; and then it will be seen with what speedy ruin a structure so large, and appearing so solid when viewed from a distance, will tumble to the earth.

Though called up, however, Mr. Chairman, by the assertions of the gentleman from Penn

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\* See Journals of Congress, January 18th, 1798.

sylvania, I shall not confine myself wholly to them, but shall incidentally notice such observations of other gentlemen, as may appear reducible to any head of argument. There are some parts of the last speech of the gentleman from Virginia, Mr. Nicholas, on which, though they appear to have no necessary connection with the subject, I cannot omit to make some animadversion. Those I shall in the first place submit to the committee, and then proceed to other and more important parts of the discussion.

The gentleman from Virginia, Mr. Nicholas, perhaps foreseeing that ample retribution of praise which he has since received, employed a considerable part of his last speech, in a most pompous panegyric on his friend from Pennsylvania, Mr. Gallatin. Had he stopped here, Mr. Chairman; had he contented himself with extolling the virtues and talents of his friend and political associate, even at the expense of every body else, I should have been disposed to pass it by unnoticed. The gentleman from Virginia, no doubt, entertains this exalted opinion of his friend from Pennsylvania; and I should never deny him the right or grudge him the pleasure of expressing it; nor have I any disposition to detract from the merit of the gentleman from Pennsylvania, or diminish the reputation which he may be supposed to possess. But the gentleman from Virginia did not stop here. Not content with extolling his friend, above all that is great and distinguished in the country, he went on to impute the worst of motives, the most base and contemptible passions, to those who do not partake in his enthusiastic admiration. He told us that frequent attacks were made in this House, on the gentleman from Pennsylvania, and that those attacks proceeded from envy of his superior talents, were a tacit acknowledgment of that pre-eminence of ability, which every day's debate rendered more and more conspicuous.

Mr. Chairman, I might I know be excused from taking any part of this observation to myself personally; for it will be remembered that I have made none of those attacks which are spoken of, on the gentleman from Pennsylvania. Perhaps this has been because I have, for my part, never felt that superiority, never perceived that pre-eminence, from which the attacks are supposed to proceed. That the gentleman from Pennsylvania has merit, nobody will deny, and nobody can be less disposed to deny it than me; but I confess that I never observed that superiority over many other members of this House, much less over all, whereby the gentleman from Virginia has been so much dazzled. And I would remind that gentleman that all greatness is by comparison; and that the comparison, in cases of this kind, is generally made, not between a man and his antagonists, but between him and his associates. Even a rush-light may seem a resplendent luminary, when compared to a glow-worm; and in a dark room, the smallest

spark becomes bright and distinguished. I would submit it to the gentleman from Virginia, whether he has not committed some mistake of this kind. Amidst the thick gloom that is observed to rest on a certain description of persons, a certain class of political opinion, in this country, I will not say in this House, is it to be wondered at, if the glimmerings of sense and capacity which are sometimes emitted from that quarter, by the gentleman from Pennsylvania, should dazzle the eyes of his associates? But they must not judge of the eyes of the community by their own eyes, nor conclude that the brightness of the sun is to be found in those flashes of light, which undiscernible amidst the full blaze of day, are indebted for all their apparent resplendency, to the blackness of that night from whose bosom they are sent forth. Let me advise the gentleman from Virginia, Mr. Chairman, to forbear his panegyrics. They produce no effect on the decision of the American public, before which the gentleman from Pennsylvania, with his associates and his opponents, stands to be judged. This judgment will be formed on better premises, than the panegyrics or the invectives pronounced in this House. It will place the gentleman from Pennsylvania, and those who appear with him on the political scene, in their true positions; it will not only be impartial, but final and conclusive; and to it all of us, whatever we may think or say of ourselves or of each other, must implicitly submit.

The gentleman from Virginia, having paid this large tribute of flattery to his friend from Pennsylvania, who, to do him justice, has not been unmindful of the proper retribution, went on to select from his political associates, another object of enthusiastic adulation, whom he has extolled in terms still more extravagant, and with allusions still more offensive. I mean, sir, the late minister to France; and as I shall have occasion to make some observations, of no very flattering nature, on the conduct of that gentleman, I beg leave to remark in the first place, that for any thing which I may say here I shall not claim the protection of my seat, or shelter myself under its privileges.

The gentleman from Virginia has represented the talents and accomplishments of this person, the late minister to France, as so pre-eminently superior, not only to the distinguished character, General Pinckney, who was sent to succeed him, but to every other character in this country, to any person who might have been sent; his qualifications as so extraordinary, his services as so great, and his conduct as so exemplary; that his recall could be considered in no other light than as the act of an assassin. Yes, Mr. Chairman, the gentleman from Virginia has declared, that the recall of the late minister to France, was the act of an assassin. And who is this assassin? It is Washington; for by Washington this minister was recalled: and for this exercise of his constitutional powers as President, he is branded

by the gentleman from Virginia with the name of assassin.

Mr. Chairman, were I to give way to the feelings which naturally arise in the breast of an American, at hearing the epithet assassin affixed to the name of Washington, I should apply expressions to the gentleman from Virginia, little suitable to the dignity of this place, and little consonant with the respect which I entertain for his personal character. But I will repress them; and instead of giving vent to a just and natural indignation, I will content myself with repelling this rude, this unlooked for attack, upon the administration of this government, and its late venerable and illustrious chief.

This I am fortunately enabled to do, in a manner the most easy and complete; for the late minister to France has written a book, "Oh that mine enemy might write a book!" was the affecting exclamation of a virtuous and suffering man of old, unjustly accused but conscious of rectitude, and wishing ardently for an opportunity of confounding his accusers, out of their own mouths! "Oh that mine enemy might write a book!" ought also to be the exclamation of the American government; which, to use the expression of its late illustrious chief, "requires nothing but a knowledge of the truth to justify its measures, and cannot but be desirous of having this truth frankly and fully displayed." The American government has been more fortunate than Job. His enemies wisely confined themselves to strong holds, of dark, vague and general abuse. They practised the "Ambiguas in vulgum spargere voces" of the poet, and wisely avoided the open field of facts and specific accusations. But not so the late minister to France. Prompted by that restless vanity for which demagogues of an inferior order are always remarkable, he has rashly and foolishly challenged his enemy to combat, on the open plain of dates and facts, and has written a book. In this book is to be found a most complete justification of the executive for his recall, in every respect except that it was so long delayed; for the book contains the most singular display of incapacity, unfaithfulness and presumption, of neglect of orders, forgetfulness of the dignity, rights and interests of his own country, and servile devotedness to the government of the country to which he was sent, that can be found in the history of diplomacy. In this book it appears, that the late minister to France took every occasion, of thwarting the views of the government by which he was sent; that he forbore to do much that he was ordered, and did much that he was expressly forbidden; that he in all cases set up his own judgment, above the judgment of his government; that he assured France "that this country was ready to submit to any violation of its rights, to any infractions of its treaties, which she might think fit to practise; and that if she thought these violations and infractions advantageous to herself she ought to persist in them, for in that case we should not only subnit,

but acquiesce with cheerfulness and pleasure:" that he made a direct attempt to render this country tributary to France, in order to gain her assistance for accomplishing by force, objects which our government was then striving to accomplish, and actually did accomplish, by amicable negotiation: that he did every thing in his power to involve this country in the war against England, pursuant to the wishes and policy of France, and directly contrary not only to what he knew to be the desire and determination of our government, but to the express letter of his instructions. All this, Mr. Chairman, appears from this book, and it is but a small part of the catalogue which might be presented. The book lies before me; its disgusting pages I will not open to the House; the members no doubt have perused it, and to their own recollection I refer for the proof of all that I have advanced. The late minister to France stands self-convicted, of every thing short of selling his country for a price. Of this I do not accuse him; but nothing else which his incapacity permitted him to do, has he left undone.

And this, Mr. Chairman, is the man, for recalling whom the epithet of assassin is applied to the name of Washington.

Mr. Nicholas explained, by saying, that he had said, "that after the full disclosure of the conduct of Mr. Monroe, he was sorry to find that gentlemen thought it necessary to make insinuations against him; but that since gentlemen made it necessary to give an opinion on the subject, he had no hesitation in declaring, that in his opinion the publication had proved, that it was in the power of the Executive to have preserved peace with France, but that they had wantonly thrown it from us. He said he was convinced that the discovery was a very unpleasant one, to gentlemen who had advocated certain measures; but he thought it could not be condemned after the attacks made on that gentleman; and that the effect was like the wounds of the assassin, who finds his enemy unexpectedly prepared. Mr. Harper continued.

I do not think that the gentleman from Virginia has made the matter better by his explanation. It appears by that very explanation, that he did apply the term assassin to General Washington, for having recalled the late minister to France: a term which, some years ago, surely could not have been expected ever to be applied to that name, within the United States, much less within these walls.

I must beg leave, Mr. Chairman, to conclude these remarks, with the declaration with which I began them, that I do not intend to shelter myself under the privileges of my place, for any thing that I have said on this subject. If the remarks which I have made on his friend

should appear harsh to the gentleman from Virginia, let him recollect that he himself provoked and gave occasion for them, by declaring that General Washington acted the part of an assassin.

Having disposed, Mr. Chairman, of this part of the subject, I will next advert to the constitutional ground taken by the gentleman from Pennsylvania, Mr. Gallatin. That gentleman prefaced his observations by declaring, that the amendment under consideration went no farther than to reduce the salaries of certain ministers plenipotentiary, from 9,000 to 4,500 dollars; but unfortunately he forgot his tenet before he arrived at the middle of his speech: for he soon confessed, that the object of the amendment was to restrain and control the executive, in the exercise of the power of appointing foreign ministers, which is vested in it by the constitution; and having made this acknowledgment, so contradictory to his first position, the gentleman from Pennsylvania proceeded to show, by the utmost exertion of his powers, that it was right and proper for the House thus to interfere, thus to control the executive, and to use its power over appropriations for effecting that purpose. Indeed the gentleman from Virginia, Mr. Nicholas, at the outset of the business, expressly stated this to be the sole object of his amendment. With a candor and openness characteristic of his usual conduct, he avowed that his object was not to save money, but to restrict the President in the exercise of this power. He told us that the diplomatic corps had been improperly increased; that the number of ministers had been improperly extended; that there was danger of a further extension, by which a dangerous executive influence in the House was likely to be produced; and that it was right for the House to interfere, prevent this extension, and bring back the establishment to its original limits; and this he stated to be the object of his amendment. Hence then, Mr. Chairman, it is manifest, not only from the arguments of the gentleman from Pennsylvania, but from the express declaration of the mover of this amendment himself, that the question now agitated is a question of power, and not a question of money. It is manifestly not a question to know, whether a minister plenipotentiary shall have this, that or the other salary, but whether this House shall direct the President where he shall appoint ministers plenipotentiary, where ministers resident, and where no ministers at all. The question goes this whole length; for if the House can say, as the amendment declares it can and ought, that no minister plenipotentiary is necessary at Lisbon or Berlin, it can say with the same propriety, and on the same principles, that no minister plenipotentiary is necessary at London, Paris, or Madrid, or that no minister is necessary anywhere.

That such is the object of the amendment, that the question between us is a question of power and not of money, is further evident from

the mode of argument by which the amendment is supported. Gentlemen do not pretend that 9,000 dollars is too much for a minister plenipotentiary at Lisbon or Berlin; on that ground we should cheerfully meet them, and agree to a reduction of the salary, if it should appear to be too high: but they tell us, and attempt to prove, that there is no need of a minister plenipotentiary at Lisbon or Berlin. In answer we allege, that by the constitution the President and Senate are solely authorized to judge, where ministers of this, that, or the other grade ought to be employed, and that this House has nothing to do with the business, but fix their salaries, which it is bound to do in a suitable manner. This gentlemen deny; and thus the question of power, the sole question which has been agitated, or is considered as of any importance, arises between us.

I say "the only question which is considered as important," because the supporters of the amendment have laid no stress whatsoever on the question of expense. They have, on the contrary, shown themselves ready to abandon it, for the sake of gaining the least additional chance of support in the great question, the question of power. This is manifest from the motion of the gentleman from Maryland, Mr. S. Smith, which was immediately agreed to by the mover of the amendment. By the amendment, as first proposed, ministers plenipotentiary were to be allowed only at London and Paris. The gentleman from Maryland proposed to allow one at Madrid also, because he had observed that the impropriety of recalling our minister from that court had been particularly insisted on, by some who opposed the amendment. The gentleman from Virginia immediately consented to modify his amendment, so as to leave a minister plenipotentiary at Madrid. From which it would appear most evidently, if we did not know it before, that gentlemen care not how many ministers plenipotentiary there are, nor how much money is spent in maintaining them, provided the House of Representatives can obtain the power of controlling and directing the appointment. It is to obtain this power, and not to save public money, that gentlemen struggle; and provided the principle can but be established, they are content to have ministers plenipotentiary as many as any body pleases; for they know that the principle may be as completely established in the case of one minister, as by turning out the whole diplomatic corps.

And, notwithstanding all this, the gentleman from Pennsylvania, Mr. Gallatin, tells us that this is merely a question about salaries, a question of saving 9,000 dollars, and wonders how it could lead to a controversy, about the constitutional powers of the President and the House. This proves that the gentleman from Pennsylvania intended his speech for a concluding speech; or that he entertains a most contemptuous opinion of the understanding of the House.

I shall, therefore, Mr. Chairman, consider this amendment as having for its object, and its sole object too, the establishment of this principle: "that the House of Representatives, by its power over appropriations, has a right to control and direct the executive, in the appointment of foreign ministers." I shall treat the question which arises upon this amendment as a question of power, between this House and the President and Senate, and I shall endeavor to show that the amendment, if carried, would be a direct breach of the constitution, an alarming usurpation by this branch, on the constitutional powers of the executive department.

The supporters of this amendment, avowing its object to be the establishment of a control over the appointment of foreign ministers, contend that this House have a right to exercise that control, and rely on that part of the constitution which provides, that "no money shall be issued from the treasury without an appropriation by law." As this House, say gentlemen, must concur in passing all laws, it follows that it may refuse its assent to appropriations. In judging whether it will give or refuse this assent, it must be guided solely by its own discretion, by its own opinion about the necessity or utility of the object, for which an appropriation is wanted. If it should think this object unnecessary, or hurtful, it is bound in duty to withhold the appropriation. Consequently it may refuse to appropriate for a minister to Lisbon, Berlin, or any other place, if it should think such minister, though appointed by the President and Senate, unnecessary or injurious. This I take to be a fair state of the argument.

But gentlemen, while they lay such stress upon this part of the constitution, seem entirely to forget another part, that part which provides that the "President, by and with the advice and consent of the Senate, shall appoint foreign ministers and consuls." It will, however, be admitted, that these two parts of the constitution are equally authoritative, and must both have effect; that the whole instrument, like all other instruments, must be taken together, and so construed that none of its provisions may be defeated or rendered nugatory. These two powers, therefore, the power of appointment in the President and Senate, and the power of appropriation in the House, must be reconciled to each other; must be made to act as mutual helps, not as mutual obstructions. How is this to be done? Certainly not by admitting the doctrine of this amendment, which would utterly destroy one of the powers; would give the House an absolute control over the appointment of ministers, and reduce the President and Senate to the mere power of making a nomination, which the House might refuse to agree to according to its good pleasure. This is the plain and necessary consequence of admitting the principle contended for in support of this amendment, that the House, when

called on to appropriate for an officer, legally appointed, may, in the first place, inquire whether the appointment is necessary.

Some other way of reconciling these powers must therefore be found out; and what is it? We contend, Mr. Chairman, that it is thus. An office must first be authorized by law: for nobody pretends that the President and Senate can create offices. When the office is thus authorized, the President and Senate exercise their power of appointment, and fill the office. The House of Representatives then exercises its constitutional power over appropriations, by providing an adequate compensation for the officer. In the exercise of this power they cannot inquire, whether the office was necessary or not; for that has already been determined by the law which authorized it. Neither can they inquire whether the office was properly filled; for that would be to invade the powers of the President and Senate, to whom by the constitution the right of choosing the officer is exclusively referred. Into what then may they inquire? They may inquire what is a proper and adequate compensation for such an officer; they may fix the amount of his salary, and in fixing it they must be guided by a proper discretion, by a sense of duty, by the nature of the office, the circumstances of the country, and the public service. Thus the constitution would be reconciled, and each department would act within its proper sphere. The President and Senate could make no appointment till the office should be authorized by law, consequently there would be no danger of abuse. When they had made the appointment, they could not fix the amount of salary, or order the money to be paid out of the treasury: another guard against the danger of abuse. When the appointment should be duly made, the House, on the other hand, would be bound to provide an adequate salary, and could not by refusing it defeat the law and the appointment, because they might think the one unnecessary, or the other unwise; and this principle would be a guard against any abuse of the powers of the House; would prevent it from invading the province of the other departments, and subverting the principles of the constitution.

Had gentlemen confined themselves within these limits, had they carried their inquiries no farther than to the adequacy of this or that salary, this debate would never have existed. We should have met them on the ground of sufficiency of salaries, without any reference to constitutional points, or contention about constitutional powers. But this was not their conduct. They expressly declared, not that the salaries were too high and ought to be reduced, but that the appointments themselves were unnecessary, and ought to be abridged; and thus they drove us into the constitutional question, and compelled us to defend the Executive powers, against their attacks in this House.

But, say gentlemen, is the House always

bound to appropriate? If the President should appoint an hundred ministers plenipotentiary, must the House without inquiry give money to support them all? What guard would there then be, they exclaim, against an enormous and abusive extension of the diplomatic establishment?

To this I answer, Mr. Chairman, in the first place, that we have a security in the responsibility of the President. He is elected by the people; and elected every four years. All these appointments, though sanctioned by the Senate, must originate with him; and therefore he is particularly and almost solely responsible. His character is at stake. He is a single actor, on a most conspicuous theatre; and all eyes are upon him. He is watched with all the jealousy, which in this country particularly is entertained of executive power. He is watched by the gentlemen themselves, who support this amendment, and who are sufficiently prone to find fault with him and abuse him, even when he acts properly. This he well knows, and consequently will take care to do nothing which may strengthen their hands, by giving them grounds for censure. Should he act improperly, make foolish or unnecessary appointments, he must disgust his friends and supporters, forfeit the public esteem, and lose his election. He may be even turned out by impeachment, before the time for a new election arrives. These, I apprehend, are sufficient securities against wanton misconduct.

I answer in the next place, that if the President should think fit to abuse his powers, it is his own concern, and no business of this House; unless, indeed, we choose to impeach him. We are sent here by the people to exercise our own powers, and not to watch over the President; who equally with us derives his powers from the people, and is amenable to them, and not to this House, for the exercise of those powers. We may, indeed, as individuals, censure his conduct, as we may that of any member on this floor, and endeavor to prevent the people from re-electing him; but as a body we have nothing to do with him, or his conduct, but to impeach him. If he proposes measures to us which we do not approve, we may reject them, in the same manner as he may reject bills which we send up to him: but we have no more right to prevent him, either directly or indirectly, from making such appointments as he pleases, than he has to prevent us from passing such votes or resolutions as we please. The interference in one case is equally unconstitutional as in the other. It has indeed become fashionable, with some gentlemen on this floor, to consider this House as "the people," and to speak and act as if the people had delegated to us, their general superintending power over the other departments: but this doctrine is unknown to the constitution, to the utter subversion of which it directly leads. It directly leads to that concentration of powers in one popular body, which it was the main object of the constitution to

prevent, and which it was and is the main object of those gentlemen to introduce: that concentration to which this amendment is considered and intended, by its supporters, as an introductory step.

I answer in the last place, Mr. Chairman, that if the President should appoint an hundred ministers plenipotentiary, or commit any other such wanton and foolish abuse of his power, it would be an extreme case which would speak for itself, and dictate the line of conduct which this House and the country ought to pursue. But we never can legislate on extreme cases. They must be left to suggest and provide their own remedies, when they occur. Suppose two-thirds of both Houses, under the influence of some unaccountable madness, should pass a law in spite of the President, for building fifty ships of the line, to be given to France in order to augment her navy, or for any other violent purpose, how ought the President and the country to act? I do not know: these would be extreme cases, and they would carry their own evidence, and the indication of their own remedies, with them. We may as well suppose extreme cases of one kind as of another; and however our own self-love may induce us to think, that there is less danger from us than from the President and Senate, and that power, however dangerous in their hands, is perfectly safe as soon as it comes into ours, the constitution and the framers of it judged otherwise, and they judged rightly. It is infinitely more dangerous in our hands, when uncontrolled; because we have less personal responsibility, and are far more liable to the influence of passion. When therefore these extreme cases occur, we will act accordingly; and should they obviously require the breach of a law, the necessity will be universally felt and acknowledged, and we must break it. All that I contend for is, that the present is not an extreme case; and that these appointments being authorized by law, a law must be broken before we can defeat the appointments, according to the avowed object of this amendment. I contend that when we undertake to defeat these appointments, we must consider them as authorized by law, as much as the appointment of a Judge, or a Secretary of the Treasury; and must inquire whether the motives are sufficiently urgent, the case sufficiently extreme, to induce the necessity of breaking a law. This is denied by gentlemen who support the amendment. They contend that these appointments of foreign ministers are not to be considered, as completely authorized by law; and consequently that the House may withhold the appropriation, without breaking any law. This is the very point in dispute; and to this point I shall direct such remaining observations, as seem necessary to be made on the constitutional question.

The question then is, Mr. Chairman, from what source is the office of minister plenipotentiary, or any other foreign minister derived

The officer, we well know, must be appointed by the President and Senate; but the office and the officer are distinct things; and before an officer can be appointed, an office must exist; unless gentlemen are disposed to admit, as I certainly am not, that the President and Senate can create offices. The gentleman from Pennsylvania, Mr. Gallatin, well aware that if the office of foreign minister could be considered as legally existing, previous to the appointment by the President and Senate, and independently of it, the conclusion which we contend for would irresistibly follow, has denied this position; has denied that the office of foreign minister becomes a complete and legal office, as soon as the officer is appointed by the President and Senate.

Mr. Gallatin explained. He had asserted, he said, the very contrary; and had admitted, though he considered it as a disputable point, that the office was like that of a judge, and became complete on the appointment by the President. But he had denied that the House was bound to appropriate for the officer. Mr. Harper continued.

I know, Mr. Chairman, what the gentleman denied, and what he admitted; and it appears by his explanation, that I was right in my first statement. The gentleman contended, and that was the leading point of his argument, that the office of foreign minister was derived from the appointment of the President. And why did he contend for this? Because he knows that the President cannot erect offices; and consequently if the office of foreign minister had no other origin than the appointment of the President, it could not be considered as a legally existing and complete office, until this House had concurred in it. This was the scope and object of the gentleman's argument, and hence his solicitude to establish the position, that the office of foreign minister originates in the appointment of the President. He said, indeed, that he would admit these offices to be analogous to those of judges; but he immediately denied it again, by denying that the House was bound by any law to appropriate for these offices, as they evidently are for judges; and in denying this, he denied every thing. The gentleman admitted in form, but denied in substance, and contended for principles directly at war with his seeming admission. These are complete offices, according to the gentleman, but they are derived from no legal authority, nor is the House bound by any law to appropriate for their support. That is, they are legal and they are not legal; they are offices, and they are not offices; and this is the amount of the gentlemen's admission, and of his explanation. Thus he told the House, on a former occasion, that he did not dispute the power of the President and Senate to make treaties; he only contended that those treaties when made

were not binding, till the House had concurred in them by granting appropriations: in other words, that the President and Senate could make treaties, which however though made, were in fact not treaties, till ratified by the House; that is, that there might be treaties, which were not treaties. This was the substance and amount of that gentleman's reasoning, on a former occasion; and it exceedingly resembles his present argument, as just now explained by himself.

The question, therefore, between the gentleman from Pennsylvania and us is, whether the office of foreign minister be derived from the appointment of the President and Senate, concurred in by this House: or must be traced to a higher origin, and considered as completely existing before the appointment takes place: in the same manner as the office of Secretary of the Treasury, or of State, which completely existed as soon as the law was passed establishing those departments, and before any officer was appointed? We contend for the latter doctrine, and the gentleman from Pennsylvania for the former. If he be right it follows, that the appointment is incomplete until this House gives its sanction; for we well know that the President and Senate cannot of themselves create an office. If we be right it follows, that as soon as an appointment is made to fill this office, this House is legally bound to supply an adequate salary: in the same manner as for any other office created by law.

There are two modes, Mr. Chairman, by which an office may exist, either by law or by the constitution; and from one or the other of these sources, the office of foreign minister must be derived. It is not derived from the constitution, like the office of President, Vice-President, or Speaker of the House; for the constitution speaks of it as already in existence. The constitution does not say there shall be foreign ministers, and then go on to direct how they shall be appointed, as in the case of President; but considering the office as already existing, it merely directs how it shall be filled. "The President," it says, "by and with the advice and consent of the Senate, shall appoint foreign ministers and consuls." Unless, then, gentlemen are disposed to deny that there were foreign ministers previous to the constitution, they cannot contend that the office of foreign minister is derived from the constitution. It must therefore be derived from the law.

But from what law? Not from any act of Congress; for we know that there is no such act. Congress has never done any thing more than to fix salaries for foreign ministers, and vote money to pay them: And besides, the constitution, which is previous to all acts of Congress, recognizes the office of foreign minister as already existing, and directs in what manner the appointments to fill it shall be made. From what law then is this office derived? Mr. Chairman it is derived from the law of nations.

In every civilized state there are two sorts of

law, derived from two distinct sources; the municipal law, and the law of nations. The law of nations, deriving its origin and its force from the consent of nations themselves, mutually given to each other, is independent of their municipal laws, which have relation to their own internal affairs, and depend upon the acts of their respective governments. The municipal laws of the United States consist in our acts of Congress, and are derived from the authority given by the constitution. The law of nations, as it respects us, has a higher origin, and became binding on us from the moment when we erected ourselves into an independent state, and entered into the pale of civilized nations. We then gave our consent to that law, when we began to send and receive ambassadors, and to form treaties with other powers. This law then became binding on us, by our own consent and our own acts; and this law establishes the office, regulates the duties, and defines the privileges of foreign ministers. That office consequently was established among us, as soon as we submitted ourselves to the law of nations. Accordingly we had foreign ministers before we had a President, before we had a Congress, and before we had a constitution. Even before the first articles of confederation were entered into, we considered this office as existing; for those articles do not establish the office, but merely declare how it shall be filled, by whom foreign ministers shall be sent, by whom they shall be appointed.

The gentleman from Pennsylvania indeed has told us, that the office of foreign minister originated in the appointment of the President and Senate. But where did that gentleman learn, that the President and Senate can create or originate offices? He has said that the office becomes complete, when sanctioned by an appropriation in this House. But all offices not existing by the constitution must be created by law: and where did he learn that this House could concur in a law, by any other means than having a bill before them, and passing it with the usual forms? Where did he learn that this House could, in this indirect way, by voting a sum of money, legalize an act not otherwise legal, and give the force of a law to what otherwise would not be a law? The gentleman has neither learned this in the constitution, nor in the proceedings of the House; but though we know not where he learned it, we are well apprized of the purpose for which he introduced it here. That purpose I have already explained.

It being manifest then, Mr. Chairman, that the office of foreign minister is established by the law of nations, it only remains to inquire whether that law is complete and binding. Can there be a doubt that it is so, within its proper sphere? Do not our courts of justice acknowledge its existence, and yield to its authority on all objects on which it is calculated to act? Is any aid required from acts of Congress, or other municipal laws, in order to give it efficacy? Certainly not. These two kinds

of law, the law of nations and the municipal law, are each supreme in their respective spheres. They operate indeed upon different objects, and are executed in different modes: but each is complete in its operation. From hence it results, that an office existing by the law of nations has an existence as completely legal, as one which exists by act of Congress: that the office of foreign minister is as much a legal office, exists as much by the laws of this country, as the office of Chief Justice, or Secretary of State: and that when one of these offices is filled by the appointment of the President and Senate, the House is under as complete a legal obligation to provide an adequate salary for it, as for the other. This House can no more say this, than the other minister plenipotentiary is unnecessary, and we will not provide for him, than it can say a Chief Justice or a Secretary of State is unnecessary, and we will not provide for him. It would as much be guilty of a violation of law in one case, as in the other.

But, Mr. Chairman, if these conclusions, and the premises on which they are founded, should be erroneous, if the doctrines of the gentleman from Pennsylvania should be correct, still this amendment cannot be supported. It is in direct contradiction with the principles on which its supporters rely, and is refuted by the very arguments adduced to defend it.

What is the doctrine of the gentleman from Pennsylvania? That the office of foreign minister originates with the appointment of the President, and becomes completely established when this House has sanctioned it by an appropriation. I state this to be his doctrine, though he did not lay it down in these express words. This is the substance; for otherwise he must admit, in direct contradiction to his whole argument, that the office not only originates as he says, but also becomes complete, by the appointment of the President and Senate: in other words that the President and Senate can create offices. When the gentleman from Pennsylvania therefore told us, that although the office of foreign minister originates with the appointment of the President and Senate, yet the House is not bound to appropriate a proper salary, as he admits it to be bound in case of an office erected by law, the office of Chief Justice, for instance, he told us in substance that this office, though originating with the appointment of the President and Senate, remained inchoate, did not become a complete and legal office, till sanctioned by an appropriation in this House. This, Mr. Chairman, is the true doctrine of the gentleman from Pennsylvania; and it is precisely analogous to his doctrine of inchoate treaties, about which we heard so much on a former occasion. His doctrine about treaties was this; that a treaty, though made by the President and Senate, is but an inchoate act, till completed by the assent and sanction of this House. The House, he said, was in no wise bound to give this assent; but when it



should be given, the treaty would then become complete. Accordingly, after this House had assented to the British treaty, by passing an appropriation for carrying it into effect, that gentleman told us that the treaty was complete, and had become as much the act of this House as of the President and Senate. This position he has repeated more than once; and in the debates on the President's speech, during the summer session, he laid it down in the most emphatic manner. I presume, Mr. Chairman, that an "inchoate office" is like an inchoate treaty, and may become perfect in the same manner. The gentleman admits, nay contends, that what he calls an inchoate treaty becomes perfect and binding, to all intents and purposes, on this House and every body else, as soon as the House gives its sanction by an appropriation. Hence it irresistibly follows, that this inchoate office of foreign minister, this office originating according to the gentleman from Pennsylvania in the appointment of the President and Senate, but not binding on the House, and therefore not complete, must become complete and binding, from the moment when it receives the sanction of the House. If not, it never can be complete and binding; must always remain an inchoate thing, which would be a most manifest absurdity.

If, therefore, the sanction of the House can legalize and complete that office of foreign minister, which originates in the appointment of the President, this sanction has already been given, and these officers of minister plenipotentiary to Lisbon and Berlin, which it is the object of this amendment to destroy, have already been legalized and completed by the assent of this House. They are consequently, at this time, according to the principles of gentlemen themselves, completely legal officers; as much so as those of President, Chief Justice, or Secretary of State; and these gentlemen in attempting to destroy them, by withholding an appropriation, are guilty of as direct and as great an infraction of the law and the constitution, as if they were to attempt to drive the President of the United States from his office, by refusing the annual appropriation for payment of his salary. An office must either be legal or not legal. If legal it is equally binding, in whatever mode it became so, whether by the law of nations, an act of Congress, or the appointment of the President and Senate, sanctioned by this House; and there exists the same obligation on the House to provide an adequate salary, in one case as in the other.

Will gentlemen ask when these offices, of minister plenipotentiary to Lisbon and Berlin, received the sanction of this House? Lest they should have forgotten, I will tell them. The first received it in May, 1796, and the second from this present Congress, in June, 1797. It will appear by a reference to the files of the House, that on the 28th of May, 1796, the President of the United States sent a message to the House, informing it that he had appointed

ministers plenipotentiary to Madrid and Lisbon, instead of ministers resident; and that this augmentation of the grade would require an additional appropriation. In consequence of this message a bill was passed on the 5th of June, following, by which the necessary appropriation was made. Thus the office of minister plenipotentiary to Lisbon received the express sanction of this House.

Surely we cannot have forgotten what passed in this House last June, during the first session of this Congress. We were informed by the estimates from the department of state, that 13,500 dollars would be wanted for the salary and outfit of a minister plenipotentiary to Berlin. A bill was brought in containing this appropriation. The appropriation was opposed; but after full discussion it was carried by a great majority, and the bill passed. Thus the office of minister plenipotentiary to Berlin received the express sanction of this present House of Representatives.

If these offices, therefore, were inchoate before, according to the doctrine of the gentleman from Pennsylvania, they became complete on his own principles, as soon as these appropriations were consented to by this House; for he has told us over and over that an inchoate treaty becomes complete, as soon as this House gives its assent by an act of appropriation; and, by the whole tenor and the very terms of his argument, he places an inchoate treaty and an inchoate office on the same footing. Consequently he is now bound to appropriate for this office, as much as he admits himself to be bound to appropriate any sums which may still be wanted, for carrying into effect a treaty once sanctioned by this House. And yet that gentleman, and those who agree with him on the present occasion, are content, for the sake of effecting their favorite object, the establishment of a control over Executive appointments, to act in direct opposition to their own principles, in manifest inconsistency with those very doctrines, for which, on former occasions, they have so strenuously contended! The truth is that they shape their doctrines to the purposes of the moment, and abandon them without difficulty when those purposes require it. When they had resolved to defeat the British treaty in this House, they introduced the doctrine of inchoate. They alleged that the House was under no obligation to carry a treaty into effect, because it was only an inchoate act, till sanctioned by this House; but they admitted, in the most explicit manner, and made it a part of their doctrine of inchoate, that when this House had given its sanction, the treaty became complete and obligatory. Now that their object is to turn certain ministers plenipotentiary out of office, and to establish a precedent of the control of this House over the Executive, in the exercise of its constitutional functions, they discard their favorite doctrine of inchoate, which is no longer adequate to the purpose. They go farther, and contend that the House

by its power over appropriations, has a right to control all the acts, to stop all the movements of the other departments; that it may withhold appropriations, in all cases, according to its own good pleasure or caprice, which the gentlemen dignify with the name of discretion. There cannot be a doubt that the doctrine now contended for, would enable this House to drive the secretaries, the judges, and even the President, from office, by withholding the appropriation for their salaries, if ever they should become personally obnoxious to a majority of this House. The step from the present doctrines to that point would be far shorter than from inchoate to the present doctrines; and the right of encroachment being once established, there will be nothing to set bounds to it, but the good pleasure of the House. I have heard it avowed, Mr. Chairman, that the affairs of this country can never prosper, until all the present heads of departments shall be driven from office; and I have no doubt that the means of effecting that purpose, so desirable to these gentlemen, are intended to be furnished by this amendment. Should it prevail it will establish a precedent, that may easily be extended to that or any other object; and have we reason to believe, from what we now see, and have witnessed on former occasions, that the extension will not be attempted?

Let not gentlemen, therefore, Mr. Chairman, accuse us of too much jealousy, when we zealously oppose these attempts, and charge them with supporting principles which lead to the utter overthrow of the constitution. I view their principles in that light; and in this view I am fully confirmed by the most mature reflection, not only on the consequences of those principles, but on the manner in which they have been introduced and supported here.

But, say gentlemen, what interest can we have to subvert the constitution? Why should we harbor designs of overthrowing the government, and introducing anarchy and confusion? Have we not as much at stake, as much to lose, as you? Have we not equally concurred in the establishment of this government? And what inducement can we have to wish for its destruction?

Since gentlemen, Mr. Chairman, make this appeal to their motives, I must be permitted to offer a few observations on that subject, before I dilate, as it is my intention to do, on the object and tendency of their political system.

As to motives, Mr. Chairman, I have no difficulty in declaring, that I believe the far greater part of these gentlemen to be actuated by the purest motives. I do not say all, because I am not bound to answer for the motives of all. There are some among them of whose motives I know nothing; but far the greater part of those who support the system, of which this amendment is a leading member, are actuated in my opinion by motives as pure, I will not say as my own, because perhaps those gentlemen may deny me the merit of pure motives,

but as those of the best and purest men in this country: and if I could find security against the consequences of men's actions, in the uprightness of their intentions, I never should apprehend harm from these gentlemen. But, Mr. Chairman, does history, experience or common sense inform us, that such security can be found? Do we not confine lunatics, and keep knives and razors out of the hands of children? Why? Not because we are afraid of their intentions, but of their actions: because we are justly apprehensive of their doing mischief, without intending it.

Does not history teach us that there is nothing more common, than for men to do mischief when they mean to do good? Did the La Fayette, the Rochesancalds, the Liancours, the Lameths, and the Clements of France, when they first taught the doctrines of insurrection, and stirred up the mob to resist the government, intend to pull down ruin on their country, their families and themselves? Did they intend to procure their own death or banishment, and the confiscation of their estates; to send to the guillotine hundreds of thousands of the best of citizens, including their own families and friends; to drench the whole country in blood, and transfer the most absolute power into the hands of the vilest of mankind? Certainly they had no such intentions; and yet we find that these consequences did result from their measures. France and the world have groaned and are groaning under these consequences; nor are they less real or less deplorable, because their authors intended to do good and not mischief. Fanatics never, or very rarely indeed, intend to do mischief; and yet all experience proves that no description of men are half so mischievous. They rush blindly on, without reflection or hesitation, and aim directly at the accomplishment of their designs, without being delayed or turned aside by any considerations of the result.

With these awful examples before us, shall we trust fanatic men with power by reason of their upright motives, or sit regardless of the consequences of their actions, because we are convinced that their intentions are pure? So far otherwise, Mr. Chairman, that in my opinion their honesty is an additional reason for dreading them. Of your cool, calculating political knaves I am never afraid. Such men are not apt to be much trusted; and moreover they never do mischief, but when there is something to be gained by it. They never do mischief for mischief's sake; and being for the most part men of sense and reflection, you may generally convince them that their own interest lies in avoiding mischief. But it is the sincere, the honest fanatic whom I dread, and whom I think myself bound to restrain, as I would confine a maniac. His honesty, his zeal, and his good character, enable him to inspire confidence and gain proselytes. The consciousness of upright intentions renders him as bold as he is blind. He rushes directly forward, without looking to

the right hand or the left; pulls down all that stands in his way, regardless on whom it may fall; destroys a country, in order to make it free; inflicts unheard of calamities on the present generation, for the happiness of posterity; and makes experiments on governments and nations, with the calm indifference of an anatomist dissecting the body of a malefactor. These are the men of whom I am afraid, and whom I think it my duty at all times and places to withstand: men whose projects and experiments have brought ruin on other countries, and will bring it on this unless they are resisted and restrained, by the sober and reflecting part of the community.

After all, Mr. Chairman, I am not much afraid of these men. There was indeed a time when their efforts might have been formidable; because that frenzy of revolution which seemed to have been poured out upon the earth like a vial of wrath, which had fallen upon mankind like a plague, did once extend its dreadful influence to this country, where in a greater or less degree it infected every description of people, and made them eager for change and ripe for revolution. But it has passed away never to return. Fortunately before the disease had risen to its height here, time was given for observing its terrible effects elsewhere; and the American people profiting by example, and aided by the peculiar happiness of their situation, first resisted and have finally subdued this dreadful malady, the love of revolution.

In this, I repeat again, they have been aided no less by their own happy situation, than by the mournful experience of other countries. For revolutions, Mr. Chairman, are brought about in all countries, by three descriptions of men, philosophers, jacobins and sans-culottes. They exist in all countries, and accordingly in all countries are to be found the materials of revolution; but they exist in different proportions, and according as these proportions are greater or less in any country, so is the danger of revolution with which it is threatened.

The philosophers are the pioneers of revolution. They advance always in front, and prepare the way, by preaching infidelity, and weakening the respect of the people for ancient instructions. They are, for the most part, fanatics of virtuous lives, and not unfrequently of specious talents. They have always, according to the expression of an ancient writer, "*Satis eloquentiæ, sapientiæ parum*;" eloquence enough, but very little sense. They declaim with warmth on the miseries of mankind, the abuses of government, and the vices of rulers, all of which they engage to remove, provided their theories should once be adopted. They talk of the perfectibility of man, of the dignity of his nature; and entirely forgetting what he is, declaim perpetually about what he should be. Thus they allure and seduce the visionary, the superficial and the unthinking part of mankind. They are for the most part honest, always zealous, and always plausible;

whereby they become exceedingly formidable. Of the three classes employed in the work of revolution, they are infinitely the most to be dreaded; for until they have shaken the foundations of order, and infused a spirit of discontent and innovation into the community, neither the jacobins nor the sans-culottes can produce any considerable effect. The army cannot find entrance, until these forerunners have corrupted the garrison, to open the gates. Of these men we, in this country, have enough and more than enough.

Of jacobins we also have plenty. They follow close in the train of the philosophers, and profit by all their labors. This class is composed of that daring, ambitious and unprincipled set of men, who possessing much courage, considerable talents, but no character, are unable to obtain power, the object of all their designs, by regular means, and therefore perpetually attempt to seize it by violence. Tyrants when in power, and demagogues when out, they lay in wait for every opportunity of seizing on the government *per fas aut nefas*, and for this purpose use all implements which come to their hands, neglect no means which promise success. Unable to enter at the door of the sheepfold, they climb in at the windows, and devour the flock. Although they use the assistance of the philosophers in gaining entrance, they dread their honesty, their zeal, and their influence with the public; and accordingly the first use they make of power, when they can obtain it, is to destroy the philosophers themselves.

As the philosophers are the pioneers, these men are the generals of the army of revolution: but both pioneers and generals are useless without an army, and fortunately the army does not exist in this country.

This army is composed of the sans-culottes, that class of idle, indigent, and profligate persons, who so greatly abound in the populous countries of Europe, especially the large towns, and being destitute of every thing, having no home, no families, no regular means of subsistence, feel no attachment to the established order, which they are always ready to join in subverting, when they find any one to pay them for their assistance. These were the men who in the pay of a wealthy jacobin, and under the guidance of fanatic philosophers, overturned all order and government in France, and will overturn it in every other country, where they exist in great numbers, and are not opposed with great force and unceasing vigilance. But fortunately for America, there are few sans-culottes among her inhabitants, very few indeed. Except some small portions of rabble in a few towns, the character is unknown among us, and hence our safety. Our people are all, or very nearly all, proprietors of land, spread over a vast extent of country, where they live in ease and freedom, strangers alike to oppression and want. Those who reside in the largest towns are possessed of property, have homes, families, and regular occupations;

and among such a people the principles of sans-culottism never did, and never will, make much progress. If a new Duke of Orleans were here, with a Mirabeau for his privy-counsellor, and an annual revenue of three hundred thousand guineas to supply the means of corruption, he could not raise a mob sufficient to drive this body from their seats, or overawe their deliberations. We have jacobins in plenty, and philosophers not a few; but while we are free from sans-culottes, and it is probable that the nature of our government, and the abundance of untilled land in our country, will secure us from them for ages, we need not apprehend great danger. We ought, no doubt, to watch and withstand the enterprises of the pioneers and generals; but while they remain without troops, they are not much to be dreaded.

Having made these observations on the purity of gentlemen's motives, observations which were due not only to candor and truth, but to the respect I feel for their personal characters, I hold myself at full liberty to explain the tendency of the present amendment, and of that system of policy of which it is a part. I mean not to impute any ill intentions to gentlemen when I declare, and attempt to prove, that this tendency is to the utter subversion of the present government. It is my firm and most deliberate opinion, that the amendment now under consideration, and the principles of that system to which it belongs, lead directly to the introduction of anarchy and revolution in this country; and if not steadily opposed, must sooner or later produce that effect. This opinion it is my purpose to support, by the observations which I am about to offer; and it is by a full conviction of its truth, that I have been induced to consider it as a most sacred duty, to combat the system at all times, and by all the means in my power.

The gentleman from Pennsylvania, Mr. Gallatin, has denied this to be the tendency of his system, and contends that our principles, not his, lead to revolution and anarchy. Revolution and anarchy, he tells us in emphatic language, are the results of a system of expense, of war, of oppression, and of arbitrary sway; the last leaf of that book, in which are written the excesses of tyranny. I agree fully with the gentleman in this position; but there is another question anterior to this, which he has omitted to discuss. It is by what means tyranny, by what means the excesses of arbitrary government, are most likely to be produced? This question I propose to discuss with the gentleman from Pennsylvania. I mean to compare his system, his principles, with ours, and to inquire which of the two is most likely to introduce arbitrary government into this country. And I hope to convince, not that gentleman himself, but the House, that if ever arbitrary government should exist here, it must owe its existence to the system of policy which that gentleman supports.

Now, let me ask, Mr. Chairman, have the

governments of other countries been converted from free into arbitrary governments? By one of two ways; either a military chief, possessing little political authority, but hereditary, and having at his disposal the military force of the state, has availed himself of the frequent wars by which neighboring states are so apt to be afflicted, has augmented that military force, and finally employed it in extending and confirming his own authority; or in states where no military chief of this description existed, popular leaders possessed of talents, and actuated by an inordinate ambition, have formed a strong party among the people, have invaded and finally subverted the authority of the government, and erected to themselves an absolute dominion. Every state that has lost its liberty, since the foundation of the world till the present day, except in cases of conquest by a foreign power, has lost it by one or the other of these two methods. The first is the natural death of free monarchies, the second of free republics; and both ancient and modern history furnish many examples of both. It was by the first that all the feudal states were converted into absolute monarchies, except England and Poland; the former of which was protected by its insular situation, from the necessity and also from the consequences of a great military power in the hands of its chief, and thus preserved its liberties; while in the latter, powerful individuals retained the military force in their own hands, divided it among themselves, kept their chief in subjection, and at length by their feuds and civil broils destroyed the strength of the state, and delivered it over to be subdued and divided by the neighboring powers. It was by the concentration and exercise of military force, in the hands of an hereditary chief, that the Cortes of Spain were broken under Ximenes, and the states general of France under Richelieu and Mazarine. It was thus the great princes of Germany became absolute, in their respective dominions; and that the Russian despotism was founded on the ruins of feudal aristocracy.

This danger, however, does not exist in popular governments. They have no great military chief, of hereditary power, who, disposing absolutely of the public force, may use it for the extension of his own authority; and of all republics that ever have existed, none ever was so little threatened with danger from that quarter as ours. It is needless to dwell on the reasons of this particular advantage; for they are obvious to every one. When republics fall, they fall by other means; by gradual inroads on the principles of their governments; by popular encroachments on regular authority; by the concentration of their powers in some popular body, where artful, able, and aspiring demagogues obtain sway, and establish arbitrary power under the name of the people. This is the quarter from which all popular governments have been assailed, for the most part with success, and from which ours will be

successfully assailed, should the principles of the gentleman from Pennsylvania ever be adopted. Thus fell Rome under the power of Cæsar; thus fell the republic of England under the power of Cromwell; and thus will fall the United States under some future Cæsar or Cromwell, unless a steady opposition be given to the system of the gentleman from Pennsylvania, of which this amendment, let it be repeated, forms a part.

When the examples of the ancient republics were adduced by my friend from Massachusetts, Mr. Thatcher, the gentleman from Pennsylvania denied it to be applicable, because the government of those republics was different from ours. I know, Mr. Chairman, that our government is different from that of Athens or Rome, and I wish it to keep so. That is the object of all my exertions, of all my zealous opposition to motions like the present. To make our government like those of Athens or Rome is, in my apprehension, the object or tendency of the system advocated by the gentleman from Pennsylvania. How is this to be effected? By inducing this House, sometimes under *thus* and sometimes under that plausible pretence, to establish precedents of encroachment on the other departments; to practise on these precedents, and extend them further and further, until at length all power shall be concentrated in this House, and exercised according to the good pleasure of those members, who can obtain influence here. In Athens all power was concentrated in the hands of one body, and it was abused at the pleasure of those, who by their eloquence, their wealth, or by any other means, could obtain the confidence, and influence the determinations of that body. In Rome the case was somewhat different; but even there, for want of a well fixed balance in her Government, the mass of the people gradually usurped all power, and transferred it to their favorites or their purchasers. By pursuing the principles of the gentleman of Pennsylvania, the same effect must be produced here. This House first begins the attack on the President. It controls his appointments, directs his measures, gives him orders under the name of advice, and if he refuses to obey them, withholds all the supplies for the service of the government. All this is justified under the gentleman's doctrine of appropriations. A favorable moment is seized for laying the corner stone, for fixing the principle, and plausible pretexts are adduced. A treaty is made, and a popular clamor is excited against it. Advantage is taken of this clamor, to refuse an appropriation for carrying the treaty into effect, and thus a precedent of interfering in treaties is attempted to be established. A foreign minister is appointed, the reasons for whose appointment are capable of being obscured or misrepresented. The occasion is seized to deny an appropriation; and, under the pretence of saving public money, and preventing the expense of an useless appointment,

an attempt is made to acquire a control over the appointment of officers. These points being carried, the precedents are soon drawn into practice, and further enterprises are undertaken in due season. Every success gives further strength and boldness for new assaults, the cannon of every bastion that is taken, is immediately turned on the remaining works: and finally the President is reduced to the condition of the chief officer of this House, and the heads of department become the first clerks of its committees.

The President being demolished, the party proceeds with new vigor, and greater forces, to attack the Senate, which, deprived of the support of the Executive, is speedily overthrown. The House says to the Senate, "Unless you conform to our will, we lay our hands on the purse strings, and stop the wheels of government. Should a contest ensue, we are sure to be uppermost; for we are the immediate representatives of the people. We adore the people; nay we are the people themselves. Therefore beware of a contest in which you have every thing to lose, and we are certain of gaining."

The Senate, enfeebled and dismayed, yields by degrees to these powerful arguments, and this House remains victorious, with all power in its hands. It proceeds to appoint a Committee of Exterior Relations, a Committee of Interior Relations, a Committee of Justice, a Committee of Finance, and so on; and a new French Convention arises to view, where principles are set at naught, caprice is law, and the whim of the moment disposes of all public and private rights. Then follow confiscations and banishments, and the long train of tyrannical excesses ever attendant on popular bodies, in whose hands the whole powers of government have been concentrated, from the Assemblies of the people at Athens, and the Comitia at Rome, down to the Rump Parliament of England, and the French Convention. Then will the member who shall possess the most art, the greatest eloquence, and the most daring spirit of enterprise, speedily form a party, by means of which he will enslave the House, and rule the country. Should there be several of equal or nearly equal strength, they will first divide the power among themselves; but their union will be fallacious and short. They will be employed in attempting to circumvent or undermine each other; divisions will soon arise, and mortal quarrels will ensue; till at length the rest will sink beneath the overbearing genius of one, and he will establish his dominion uncontrolled. This is the liberty which gentlemen, should their schemes succeed, will sooner or later bestow on the country; the liberty of a few bold, able, ambitious men, to do what they please, and of the rest of the community to obey them. This, Mr. Chairman, may be very pleasant liberty, for those who are to be possessed of power; but for me and the rest of the community it has no charms, and I shall

therefore omit no opportunity of resisting its first and most distant approaches.

Should any one object that this state of things must be extremely distant, I beg him to recollect how short a space intervened, between the throne of Louis the XVI, and the scaffold on which he bled; between the absolute power of Necker, and the despotism of Marat; between the splendid fortune of so many distinguished families, and the dungeon or the guillotine. Governments like ours, Mr. Chairman, may be compared to the planetary system, whose preservation depends entirely on the exact preservation of its balance. The exact balance between the centrifugal force and the power of gravitation, retains the planets in their orbits; but should some angel of destruction push them out of those orbits, though in ever so small a degree, the balance is lost; one power gains what is taken from the other, and these immense bodies, whose beautiful and regular play furnishes the greatest wonder of creation, fly out and are lost in boundless space, or rush to the sun with increasing and incalculable velocity, and there are mingled in one mighty ruin. Should the gentleman from Pennsylvania succeed in his present attempt, he becomes the angel of destruction to our beautiful constitution. He destroys the happy balance of its powers; and the approximation of the different departments, though slow and gradual at first, would become more rapid as it advanced, and speedily produce that concentration of power in this House, which seems to be the object of all that gentleman's labors and cares.

It is this view of the subject, Mr. Chairman, that stimulates me to oppose this amendment, with the utmost perseverance and zeal: not that I apprehend great mischief from this particular measure, could it be viewed singly and by itself; but that I regard it as a part of a system, wholly incompatible with the existence of this government, or the happiness of this country. I regard the gentleman from Pennsylvania and his friends, in the light of an enemy, who has commenced a siege against the fortress of the constitution. He proceeds at first by cautious steps, and endeavors to make a lodgment by surprise, in some strong and advantageous outwork, from whence he may direct a more efficacious attack against the citadel itself. On this advanced ground, in this outwork, I hold it wise to resist him; convinced that success here would be the prelude to a bolder and more dangerous assault, and that all the guns which he can now carry, will immediately be turned upon our remaining fortifications.

I must now be allowed, Mr. Chairman, to say a few words as to the expediency of this measure, as to the utility of foreign ministers. To one side of the House, to me and those with whom I usually act, it is sufficient to say that the President has thought fit to appoint foreign ministers; for we are convinced that the right

of judging on this subject, has been given exclusively to him and the Senate by the people of this country, and that when he and the Senate have thought fit to exercise this right, by appointing a minister to this or that place, or of this or that grade, nothing is left for this House, but to provide an adequate salary. But other gentlemen hold a different opinion; and contend that we may not only inquire how much the salary ought to be, but also whether the appointment itself be necessary. To gentlemen who sincerely hold this opinion, I address my remaining observations.

The gentleman from Pennsylvania, Mr. Galatin, has asserted that ministers have nothing to do with the interests of commerce, except to make commercial treaties; while the care of seeing those treaties duly executed, and the commercial rights of individuals properly protected, belongs to consuls. Hence he infers that foreign ministers are useless; because we have no need to form more commercial connections, and ought to have no political connections with foreign nations. In order to prove that we ought to make no more commercial treaties, he contends, that we have received much more harm than good from those already made. This is the whole amount of this part of the gentleman's argument, which includes two-thirds of his long and ingenious speech; and it is wholly built on the assertion that "commercial interests are managed by consuls, while ministers have nothing to do with commerce, except the making of treaties for its regulation." This assertion has been already refuted, and the gentleman from Pennsylvania, though he has made it the groundwork of his whole reasoning, has not attempted to prove it. For this he had very good reasons; for he well knows it to be wholly unfounded; and therefore he has contented himself with asserting it, and taking it for granted. I say he well knows it to be unfounded, because that gentleman is well read in the law of nations, the writers on which, as well as its maxims and doctrines, we often see him adduce with much dexterity and learning, when they suit his purpose. Now, Mr. Chairman, I may I think venture to affirm, that there is no student in any college, who has read the indexes of some elementary books on the law of nations, but knows that it is the peculiar business of ministers, not only to make commercial treaties, but to watch over their execution, and to take care that the commercial rights of their country, under the law of nations as well as under treaties, are preserved inviolate. This is a business with which consuls never interfere, and to which they are wholly inadequate; not only from the nature and powers of their appointment, but also from their local circumstances and situation. All this the gentleman from Pennsylvania well knows; and yet he has asserted that every thing respecting the interests of our commerce in foreign countries, except the formation of commercial treaties, can

be and is transacted by consuls, without the interference of ministers. This assertion is the loose block on which, for want of a better foundation, he has rested the whole edifice of his reasonings; and this block I mean to knock away. A very slight stroke will be sufficient for the purpose.

In what manner, Mr. Chairman, is the observance of a treaty of commerce with any country to be enforced? In what manner are infractions of such a treaty, or of the laws of nations, to be prevented or redressed? Is it not by applications to the government of that country; by representations, by remonstrances, by negotiations? The gentleman from Pennsylvania will not answer in the negative. I know he will not. By whom then and where are these applications to be made, these representations, these remonstrances to be presented, these negotiations to be carried on? Must it be at the seat of government, by agents residing there; or at the sea-ports of the countries where the consuls reside? If the former, these agents will be ministers. You may call them by a different name, but the thing will be the same: for a public agent of one country, charged with the management of its affairs, and residing at the seat of the government of another, is the very definition of a foreign minister, by whatever name you may think fit to call him. As these transactions are, from their very nature, to be with the government itself, let us see whether they could possibly be managed by consuls.

In the first place consuls, by the established law and usage of nations, have no public official character, and cannot be admitted to any intercourse whatever, with the governments of the countries where they reside. We may, if we please, exclaim against this usage, and call it absurd or foolish; but it is the established usage of nations, and while it remains so we must conform to it. Suppose, therefore, that any injury should be done to the commerce of our citizens, by French privateers for instance, or French municipalities, in contravention of our treaty, or against the law of nations, but under color of certain acts of the French government. Could redress be obtained by means of consuls? So far from it that it could not even be applied for; since the consuls could have no access to the government. And yet the gentleman from Pennsylvania tells us, that the interests of our commerce in foreign countries can be managed by consuls!

In the next place our consuls in foreign countries are, for the most part natives of the countries where they reside; with very few exceptions they are mere private merchants; and except in the single case of the consuls to the Barbary powers, who according to established usage are a species of ministers, they receive no salaries. Are men of this description adequate to the protection of our commercial interests? Can they be expected to possess the requisite knowledge, for conducting affairs of this kind,

or the requisite influence or weight of character? Will they abandon their own private affairs, to attend at a remote capital, and solicit the restitution of vessels, the revocation of injurious orders, or indemnification for improper seizures? If they were qualified for this business, and willing to undertake it, they certainly would not do so at their own expense. When our consul at Bourdeaux, Nantes, or Marseilles, for instance, should be applied to on any business which would require an application to the French government, would he go to Paris, and remain there to finish the business, at his own expense? Certainly not. We must pay him, not only his expenses, but a compensation for his time and trouble. As these applications would frequently occur, he could not go specially for each one; but must remain always there; and we must give him a salary sufficient to induce him to do so. He would then be a minister in fact, and in expense. He would want nothing of the character but the name, and the capacity of usefulness. This is the establishment which the gentleman from Pennsylvania wishes to substitute, in the place of our present diplomatic appointments. The consuls, in order to perform the duties which he says ought to be assigned to them, must be turned into ministers; equally expensive with the present corps, but far less efficacious.

In the third place we should have a multitude of these new-fashioned consul-ministers; for we have a variety of consuls, in each of the great maritime nations of Europe. There is one in every considerable trading town. In France, for instance, we have six or seven; perhaps a much greater number. Each of these, upon the plan of the gentleman from Pennsylvania, must reside at Paris; for it would be impossible for them to be perpetually running backward and forward, between their respective sea-ports and Paris, as often as any affair might occur requiring an application to the government. If any gentleman should doubt of this, let him look at the list now on the table, of between four and five hundred American vessels, carried into the different ports of France or detained there contrary to the treaty, and redress for the capture and detention of which must be obtained, if obtained at all, from the French government, by means either of a minister or of consuls. The consuls, therefore, if they are to do the business, must all reside at Paris; and instead of one minister we should have nine or ten; perhaps a greater number. These observations will apply, with a greater or less degree of force, to every other country with which we have a considerable commerce. And yet the gentleman from Pennsylvania tells us, that our commercial relations ought to be left to consuls!

Having seen, Mr. Chairman, what the duty of consuls is not, let us now inquire for a moment what it is. We shall find them very necessary agents, though wholly inadequate to the business usually committed to ministers.



In the first place, it is their duty to settle disputes, which may arise between seafaring people of their own nation, arriving in the foreign ports where they respectively reside. These disputes, we know, are apt to arise between the masters of the ships and their crews, between the crews themselves, and between the masters or crews of different ships; and these consuls are usually empowered to terminate them, in a manner less tedious and expensive than could be done, by the local laws of the country.

In the next place, they are to assist seafaring people of their own country, who may happen to have any disputes with the people of the place; are to make advances to them when in distress; and procure redress for them in all cases, where it can be afforded by the local authorities of their respective ports.

And lastly, they are to act as agents, between the people of their country and the minister; to inform him of cases which require his interference with the government, and to facilitate to the sufferers the means of applying to him. They are to be his agents in all the sea-ports; while he is the general and immediate agent of his country, with the government. They are to keep him informed of all the cases which occur in their respective ports, of violations of treaties, or of neutral rights; so that he may be enabled to take the proper steps for obtaining redress.

The duties of these agents whom we call consuls, are, therefore, so distinct from those of a minister, so necessary in themselves, and so incapable of being performed, except by persons residing in the sea-ports, that were all the present consuls, according to the plan of the gentleman from Pennsylvania, to be immediately sent to the capitals, and converted into ministers under a new name, their place must instantly be supplied by other agents, whom perhaps the gentleman would not choose to call consuls, but who must be invested with the same powers, and perform the same duties. Such is the wise and notable scheme of the gentleman from Pennsylvania; and thus it is he is to rid us of the expense of ministers!

Let me be permitted, Mr. Chairman, to propose another question to the gentleman from Pennsylvania. If ministers have nothing to do with commercial relations, except making treaties of commerce, how comes it to pass that the gentleman is willing for us to have ministers of the highest grade, with those two nations with whom we have treaties of commerce, and where, according to him, ministers can have nothing to do? I mean France and England; with both of which nations we have commercial treaties, and where the gentleman consents to our retaining ministers plenipotentiary. To be consistent with himself he ought to attempt the recall of these two ministers, by refusing an appropriation for their salaries, and to leave untouched those of Lisbon and Berlin, who may possibly have something to do. But this is not the gentleman's object. He has another, which is to establish the principle of controlling the

Executive in the exercise of this part of his constitutional functions, and thus effect a breach in the intrenchments of the constitution; and he will pardon me for considering this doctrine, about which he has discoursed so much, and with such ingenuity, as a mere covered way to conceal his attack.

So much, Mr. Chairman, for the utility of ministers in general; who appear to me essentially necessary, not merely for making commercial treaties, but for protecting the rights of our citizens in foreign countries, according to treaties, where there are any, and under the law of nations, where there are none.

But gentlemen point particularly to the mission to Berlin. What have we to do, say gentlemen, with the minister to Berlin? What have we to do, say gentlemen, with the King of Prussia, or the politics of Germany? To me, Mr. Chairman, let me repeat it, it is enough that the President has judged it proper to send a minister to Berlin; for to him and the Senate, in my belief, and not to this House, has the constitution confided the right to decide on this subject. But to gentlemen who are not satisfied with this answer, I will give another, and one which I promise myself they will find satisfactory. Have gentlemen who object to this mission, adverted to the peculiar situation of Europe at this moment? Have they adverted to our own peculiar situation? We have a most disagreeable dispute with the French republic. France has made peace with the emperor; and a congress is now sitting, if not already terminated, to settle the affairs of Germany, and adjust the balance of Europe. In this congress, interests of the utmost magnitude in themselves, and in the highest degree important to France, are to be discussed; no less than to determine whether France shall extend her borders to the Rhine, or be restricted to the Meuse; whether more than two millions of souls, formerly subjects of the German empire, shall become citizens of the French republic. In this congress the King of Prussia is mediator; a youthful monarch; enterprising, warlike, and ambitious, at the head of three hundred thousand of the finest troops in Europe, and with a treasury replenished by four years of peace, while the coffers of his neighbors are in a most exhausted condition. With these advantages, joined to his local position, he holds in his hands the balance of France and Germany. Prepared to strike in every direction, he is dreaded and courted by all parties, and especially by France; who feels that after Austria, now exhausted and desirous of repose, he is the power most capable of checking her ambitious designs. Hence she has the greatest possible interest to soothe and conciliate him. This monarch possesses all the finest ports in the Baltic, and a great extent of maritime territory. His predecessor, the great Frederick, sensible that commerce alone can supply money, the sinews of military strength, always felt the greatest solicitude to render his States commer-



cial; and one of the means by which he hoped to effect this purpose, was to form connections with commercial nations. This was the spirit of his government, and became a standing maxim in his system of policy. Accordingly, having discovered that the United States must speedily become a great commercial nation, he was among the first to form a treaty of commerce with us. Is there not reason to expect that the same views may be entertained by his successor, now on the throne? And was it not wise to do every thing in our power, for keeping up a good understanding with a monarch, who has it in his power to serve us so essentially? How is this to be done? By sending a minister to his court, renewing our treaty with him, which is about to expire, and holding out to him the prospect of commercial arrangements, not injurious to us, but perhaps highly desirable to him, and sufficient to procure his good offices and interference, in the adjustment of our differences with France. Would this interference be unavailing? I apprehend not; for France has too much interest in keeping well with this monarch, to refuse attention to his mediation. His interference, if he should choose to interfere seriously, would on the contrary be more efficacious, in all probability, than fifty ships-of-the-line.

I do not know, Mr. Chairman, that this interference will be obtained, or ought much to be expected; but I am fully persuaded that it was wise to use the means, to send the minister, and make the attempt; from which I have no idea that we ought to have been deterred by the paltry consideration of saving nine or ten thousand dollars.

But gentlemen constantly repeat, that we ought to have no political connections with the nations of Europe. This is about as wise as to say that a man ought never to have a fever. A fever, no doubt, is a very bad thing, and political connections may also be bad things; but we already have them, and the question is not whether they are good or bad, but how we shall get rid of them. We not only have political connections, but disputes of a most disagreeable nature, growing out of those connections. This is attested by all the papers on the table, by various acts of the House, and more strongly still by the universal capture and condemnation of our property. It is vain and foolish, therefore, to repeat continually, that we ought not to have foreign connections; but our business is to inquire how they may be best got rid. How is this to be done? I answer by settling our present differences, and avoiding new ones. Unless gentlemen mean to submit, and if they do, I have nothing to say to them, having already had opportunities on former occasions, to say all that seemed necessary on that subject. Unless they now mean to submit, I repeat that the only method of getting rid of those foreign connections, about which they so loudly exclaim, is to settle our present differences in the best manner we can, and

avoid new ones. For this purpose we must employ ministers; and none could be more wisely employed than the one to Berlin.

This diplomatic intercourse, therefore, about which gentlemen raise so great an outcry, is perfectly consistent with a wish to get rid, as fast as we can, of foreign connections; and if gentlemen were sincere in that wish, it appears to me, that instead of opposing these appointments, they would applaud and support them. Gentlemen must excuse me, if I say that I do not think them sincere; that in my opinion foreign relations are merely a stalking horse, behind which they advance to attack the administration, and the system of policy which it has adopted. To foreign relations and foreign intercourse, in my opinion, gentlemen have no objection, provided those relations can be such as they wish, and conducted in the manner which they desire. It is against the nature of these connections, and not to foreign connections in themselves, that the hostility of gentlemen is directed. For the proof of this position I appeal to the history of the measures pursued by those gentlemen since the commencement of this government.

I ask gentlemen, Mr. Chairman, who think with me that the present attempt ought to be resisted, whether they can separate it from that system of measures, which its supporters have so zealously and perseveringly pursued, since the commencement of the war between France and England? I cannot. I am compelled to view it in connection with that system, and it is this connection which makes me dread it. Viewing it in this connection, the time which is chosen for making the attempt, is to me its most alarming feature. This extension of foreign intercourse, which is made the pretext for the present attempt, is not a measure of this day. It was adopted in May, 1796, and that was the time for opposing it, if the reasons for the opposition were really such as gentlemen allege. But no opposition, or at least none of any consequence, was made at that time. I have looked over the debate which took place on that occasion; and I find that although some objections were made, they rested on a ground wholly different from that now taken. They were confined to the expediency of the measure; but not one word was said of the danger of executive influence, of the necessity of checking executive patronage. Among others I was most struck by the observations of a gentleman from Pennsylvania, Mr. Findley, which agree precisely with our present doctrines, and appear to me so solid and important, that I cannot forbear presenting them to the committee. They are found in the debate of May 30th, 1796, on the extension of foreign intercourse, and in these words:

"Mr. Findley said that he had voted against this measure in the Committee of the Whole, and he thought he was right in doing so; but he was now of opinion, that except the House had information sufficient to convince

them that the appropriation was unnecessary, they ought to grant it. He wished as much as any one to save the money of the public; but he believed our government was, in some degree, obliged to conform to European practices. If we had ministers plenipotentiary at one court, he did not know where to draw the line. He believed they should do best in leaving the executive to settle this matter."

The committee, Mr. Chairman, will doubtless be struck, as I have been, with the contrast between these sentiments and those which the same gentleman, and those with whom he acts, have expressed on the present occasion. The gentleman, no doubt, has good reasons for his change of opinion, but as I do not know them, I must seek for them in the change of our situation. I should be sorry to say, or believe, that it is to be found there; but the appearance of the thing to my mind is so singular, and so alarming, that I cannot conceal it. At that time we had no dispute with France; now we have. At that time the French government had not declared us to be a people divided from our government; now it has. At that time we were not on the eve of a conflict, in which it was to be proved whether the people of this country should be governed by France, or themselves; now it is to be feared that we are. In this awful, this momentous situation of our country, when we know that France in her hostile measures proceeds on the persuasion, that our people are divided from our government, and this House against the executive; when we see measures here introduced, and prosecuted with unequalled zeal, the plain and direct tendency of which is to set this House at war against the executive, to degrade the President, and hold him up to public view as the enemy of liberty, and unworthy of confidence; can we avoid observing, how exactly these attempts are calculated to promote the views of France? Can we avoid the impression of a concert with those on the other side of the water, the impression that gentlemen are playing into the hands of a foreign government, which is pursuing every hostile measure against this country? This impression I wish to resist; but I fear that the public mind will not resist it; nor can I easily resist it, when I advert to that system of alliance with France and war against England, which was at an early period imported into this country, and has been ever since pursued with so much activity and perseverance, in this House.

When I say this system of alliance and war was imported into this country, I have no allusion to any member of this House. I have no doubt that it was imported by a member of this government, but not of this House; and it was a part of this system adopted by the revolutionists of France, when they resolved to wage war against all their neighbors, especially England, for the purpose of subverting the government of their own country, and gratifying their own personal ambition. This war we

know was resolved on, long before it was declared; and it was then determined that the United States should engage in it, on the part of France. A regular scheme was concerted, according to every appearance, for drawing them into it; the missionary arrived who was to convert us to this new faith, and this missionary was a citizen of our own, who was recalled from a public employment in that country, to fill a high official station here.\* Not long after, a French minister was sent over to second his efforts, and he came furnished with ample instructions, and fortified with ample means of seduction.

Before this minister arrived accounts reached us, that the war between England and France was commenced. As we had extensive and important relations, both of a commercial and political nature, with those two nations, it immediately became a question of the greatest importance and solicitude, how we should act in this critical situation. In the deliberations which took place on this subject, in the cabinet of the executive, two very opposite opinions immediately appeared; one for war on the side of France, and the other for a firm neutrality: and there were two men† at that time in the councils of the President, who supported these two opinions. The advocate of the war system did not venture openly to oppose the system of neutrality, which he knew to be the wish of the country. To have opposed it openly; to have declared in plain terms that we ought not to remain neutral, but to engage in the war, with finances so deranged, a government so imperfectly established, and a condition of affairs so unsettled, would as he well knew have disgusted and alarmed the people, and ruined the project. He therefore acted with more art and address. He labored to the utmost to induce the President, not to decide himself upon the question of neutrality, but to convene Con-

\* For avoiding mistakes, I declare, that in this, and the succeeding passages, I allude to the present Vice-President of the United States, whom I consider as the author and secret mover of this system of War against England, and alliance offensive and defensive with France; a system which far from being abandoned is, in my opinion, now pushed with more zeal than ever, by the same party. Hence all their efforts to keep the country disarmed, to deprive the government of the public confidence, and to compel it by those means to break anew with England, in obedience to the orders of France. For when this breach is once made, they know that a war must be the next step, and then the alliance with France, or rather subjection to her under the name of an alliance, follows of course, and these gentlemen would rule the country, under the orders of a French minister, as is now actually the case in Holland. I consider the letter to Mazzie, and Gonet's charge about "a language official and a language confidential," joined to the general tenor of this gentleman's conduct, and the book of his friend, Mr. Monroe, as full proofs that my opinion is well founded.—*Author of the speech.*

† These two men were Jefferson and Hamilton. The first was for war, the second for neutrality.—*Author of the speech.*

gress, and refer the decision to them. Why? Because it was known that a popular body, like Congress, was infinitely more susceptible of enthusiasm, more easily wrought on by management and intrigue, more obnoxious to the influence of popular clamor, mobs, and venal presses, than the cool deliberative councils of the President. It was also known, that in case of a reference to Congress, the neutral system would lose the aid of its author's talents, who was precluded by his official station for a seat in that body. To this point then the author of the war system directed his force. He labored to convince the President, that it did not belong to him to decide the question of neutrality; but to Congress, to whom the constitution required to be referred; and in this effort it is well known that he was aided to the utmost, by that description of people, who have since that time omitted no opportunity in their power, of hurrying us into a war against England.

Fortunately, however, the President saw and avoided the snare. His sound judgment and penetrating discernment enabled him to perceive all the hazards of such a reference: his good sense prevented him from entertaining a doubt, about his constitutional power to decide this question, and his firmness enabled him to make and support the decision. The proclamation of neutrality accordingly appeared.

It no sooner made its appearance, than the war-party and their chief raised an outcry against it, from one end of the continent to the other. The French minister, Genet, who arrived soon after, remonstrated; the popular societies formed under his auspices published resolutions, and the venal presses, the principal of which\* was under the immediate direction of the author of the war system, poured forth abuse against the proclamation of neutrality, the minister who advised it, and the President by whom it was issued. In short, Mr. Chairman, no expedient which disappointed intrigue and an artful, enraged spirit of party could devise, was omitted, for raising an universal popular indignation against this proclamation of neutrality, and for preparing Congress to condemn and reverse it. The changes were rung from town to town, from State to State, and from one end of the Union to the other, on pusillanimity, on national degradation, on ingratitude to France, on servile submission to England; and this proclamation was furiously assailed, with the very same weapons which we have since seen employed against the British treaty, justly considered as a part of the same system of neutrality.

The efforts of the friends of war and their chief were, however, unavailing. The people of America, indeed, felt a warm and almost en-

thusiastic partiality for France, whom they considered as contending for liberty, and on this partiality the party founded strong hopes of success. But the good sense of the people enabled them to discern, that whatever might be their wishes for the success of France, the interests of their own country lay in preserving peace; and they gave throughout the Union, the most unequivocal proofs of approbation, to the proclamation of neutrality. When Congress met this sentiment had become so strong and universal, that the war-party did not dare to oppose it. The proclamation was approved of by Congress, and the party and their chief once more had a hook put into their nose.

Though a second time disappointed they did not, however, lose courage, nor abandon their schemes. But as a system of neutrality had now been adopted, it was too late to talk of war; and the next step, therefore, was to explain this neutrality in such a manner, as would render it in effect an alliance with France, and a state of hostility against England. This was attempted accordingly; but as the author of the war-system held an official station in the executive department he could not openly appear in the attempt. The French minister came forward and advanced the pretensions, which it was the part of the other personage to second and support, in the President's council. A right was claimed on the part of France, to arm, fit and commission ships of war in our ports; to exclude British ships of war, under pretences which would have applied to every possible case; to enlist crews among our citizens; to raise armies in our country; and to preclude our courts of justice from all cognizance of prizes, taken and brought in by vessels acting under French commissions. It was contended on the part of France, that we ought to resist by force the right claimed by England, and clearly acknowledged by the law of nations, to take the goods of her enemies, when found on board of our neutral vessels. It requires no discernment, Mr. Chairman, to see that these pretensions, had they been agreed to, would have placed the direction of our affairs in the hands of France, and must instantly have induced a state of war between us and England. This was well understood by the war-party; and therefore, as every body recollects, they aided and supported the French minister, to the utmost of their power. These pretensions, indeed, were repelled by the President, who adopted a system wholly different, a system of national independence and fair neutrality; but it is well known to have been adopted contrary to the opinion, and in spite of the efforts, of the chief of this party. When it was adopted he did indeed defend it, in his official character; but he has taken care to declare\* his abhorrence of it, and the French minister did not fail to accuse him of duplicity, for having written

\* The National Gazette, whose editor, Philip Freneau, was a confidential clerk of Mr. Jefferson. This paper was the vehicle of all the most violent attacks against the proclamation of neutrality.—*Author of the Speech.*

\* In the letter to Mazzei, where he stigmatizes this very system, as a system of ingratitude and injustice to France.

officially in its defence.\* While officially defended by their chief, the party themselves assailed it with the most persevering violence. The haranguers exclaimed, the self-created societies passed resolutions, the presses devoted to the party teemed with abuse, and that in particular which was under the immediate direction of the chief, poured forth one continued torrent of virulent invective. Afraid to attack the head of the executive department himself, whose tried virtue, whose splendid services, whose great and well earned popularity, could not fail to rouse the public indignation, against any who might impeach the purity of his conduct, all the shafts were levelled at the counselor by whose advice the system was supposed to have been adopted, and by whose talents it was ably supported. It was every where declared, and every where most industriously propagated, that this person had enslaved the mind of the President, and misled his judgment. Every where, by every press and every club, was this person branded as a speculator, a thief, a plunderer of the public treasury which was under his superintendence, a wretch in the pay of England, in fine the most profligate of traitors, and the most dangerous of public enemies. These calumnies, asserted within these walls, circulated by members of this House, were industriously wafted from State to State, for the purpose of overwhelming with obloquy and public hatred the author and prop of the neutral system, as an essential step towards the destruction of the system itself. When the public mind was thought to be sufficiently prepared, a direct attack was made on him in this House, for the purpose of driving him from office, so that the President, deprived of his counsels, might the more easily be brought to concur in the designs of the war party and of France. The charges before circulated in a vague and indirect form, were reduced to a specific accusation, and brought before this House, as the grounds of a vote of impeachment. But although the party had met with some success, while they confined themselves to their strong hold, to the "Ambiguas in vulgam spargere voces" which I mentioned in the beginning of my observations, yet when they ventured to fight on the open plain of fact and proof, they were totally routed; when their vague calumnies assumed the shape of resolutions, they were easily refuted. Every charge was repelled by a vast majority of this House; and the wise and virtuous statesman to whom his country is so much indebted, rising triumphant from the contest, established his fame and his system on a basis more solid than ever: Like some mighty oak, whose roots are more strongly fixed, and new vigor added to its growth, by those storms which seem to threaten its overthrow.

Thus the war party were again discomfited; and in spite of all their efforts, aided by the efforts of the French minister, a system of fair and impartial neutrality, calculated to preserve justice to all, and keep peace with all, was completely established.

Though beaten however, Mr. Chairman, they were not subdued; nor could they be induced to relinquish their favorite object, of war and alliance. They waited for a favorable opportunity of renewing the attack, and that opportunity the unjust aggressions of England on our trade too soon supplied. These aggressions, joined to the remembrance of our former contest with that power, and the resentments remaining from her former injuries, raised a flame of indignation throughout the country, which pervaded all classes and distinctions of people, and prepared the public mind for measures of hostility. The occasion was seized by the war party, and used with an activity and zeal which gave them the fairest prospects of success. The attempts were not direct; because in that case the people might have been brought to reflect.

The great object then, as before, was war against England, and alliance with France; but not one word was said about war or alliance—words which might have created alarm, and given rise to hesitation. But measures were proposed, the direct and inevitable tendency of which was to widen the breach with England, and inflame the two countries more and more against each other. These measures assumed various shapes, to suit the feelings and catch the passions of particular individuals or classes of men, and were urged with unremitting zeal, and indefatigable industry. Sometimes commercial restrictions on the trade of England were attempted; sometimes the intercourse between the two countries was to be cut off; and sometimes confiscation and sequestration were resorted to. Many of our best citizens, and the firmest friends to peace and neutrality, were impelled by the warmth of the moment, and the insinuations of this party, to favor and even propose or advocate these measures; and nothing was omitted to raise a storm of popular resentment and public odium, against all those who had the firmness to withstand them. To speak of negotiation was branded as pusillanimity; to speak of attempts at amicable adjustment, was pronounced to be little short of treason. Gentlemen for their opposition to these hostile measures, were stigmatized on this floor as the agents of England: mobs were hired to burn them in effigy in various towns in the Union; the presses devoted to the war party assailed them with continued volleys of calumny; their names were coupled with every disgraceful epithet, with every vile accusation; in the toasts of clubs, and the resolutions of societies; and finally by all these means, aided by the continued aggressions of England, an universal flame was excited in the country, and the party saw itself approach to the moment

\* See Genet's letter to Mr. Jefferson, of September 18, 1793, pages 70 and 73, of the printed correspondence.—*Author of the Speech.*

of its triumph over the system of peace and neutrality.

When the country was thus on the point of rushing down the precipice, the President of the United States, destined so often to become its saviour, again stretched out his paternal hand, and prevented the fall. Interposing the powers of his office, and his unbounded personal popularity, between the legislature and the gulf at the very brink of which it had almost arrived, he arrested its career, and afforded the country time to recover from its delirium. He sent an envoy extraordinary, to make one further attempt at an amicable adjustment of our differences with England, before we should resolve to terminate them by the sword; and by this step he again broke the measures of the war-party.

Their rage was proportioned to their disappointment, and it hurried them into the most furious invectives against the President, against the envoy, and against all who were understood to favor the measure. Every body remembers, Mr. Chairman, how they accused this envoy of being a tool of the British ministry, an enemy to liberty, and even an opposer of the independence of this country. Every body remembers what clamors were raised about the unconstitutionality of his appointment; how the clubs toasted, the orators harangued, and the societies resolved. Every body remembers how all the presses under the influence of this party loudly alleged, that the friends of the negotiation were a faction devoted to England, and that the President of the United States, by sending the envoy, had placed himself at the head of this faction. Every one remembers how the leaders of this party did not refrain from repeating these accusations within the walls of this House, and even on this floor. It was in vain that the friends of the measure, and of peace, spoke to them in language like this: "Let this attempt at negotiation be made, and if it fails, we will join you in war. Should England refuse to do us justice, when thus peaceably applied to, we will join you in every measure of compulsion. We consider this as the last effort at negotiation; and so the President has announced it in his message for nominating the envoy." No! These gentlemen now so peaceable, when France repels with contempt two successive efforts at negotiation, and meets all our advances by new measures of hostility, could then be satisfied with nothing less, than immediate measures of coercion and irritation against England. A single attempt to negotiate they reprobated as pusillanimity, and the very idea of a compromise they treated as a surrender of the rights and honor of the country.

When the envoy arrived, and presented a memorial stating all our claims, and urging satisfaction, but urging in the usual forms of diplomatic civility, these forms were converted into a cause of accusation, a most violent outcry was raised against this civility, by the very

gentlemen who now proclaim their unbounded and even enthusiastic approbation of the conduct of the late minister to France, who in his first address to the Government of that Republic, assured it solemnly and publicly, that this country was ready to submit cheerfully, to any infractions of its treaties or violation of its rights, which France might think it for her own advantage to commit! \* Whence this strange inconsistency, but from an eager desire of war against England, and a blind, servile devotedness to France? And will gentlemen after all this deny, that the whole scope of the measures, the whole drift of the system of their party, has been war against England and alliance with France?

The envoy, however, continued to negotiate, and at length concluded a treaty, by which ancient differences were adjusted, and the foundation laid for amity in future. No sooner did the treaty arrive in the country, than every artifice was used to inflame the public mind, and excite against it the popular prejudices. Nothing was omitted to defeat it in the Senate, and when ratified by that body, it was attacked by every coffee-house politician of the party, before it was published, by all their presses, and by the resolutions of all the clubs. When made public, the most unheard of means were used to overwhelm it with general odium, to raise a universal cry against it, and deter the President from giving it his sanction. In every town mobs were assembled, under the more respectable name of town-meetings; those of a different opinion were silenced by clamor, intimidated by threats, or actually driven away by violence; and all opposition or discussion being thus prevented, these assemblages of ignorant and illiterate men were prevailed upon to vote by acclamation, for resolutions which they were incapable of understanding, and could not even hear.

Thus the appearance of a formidable popular rising in various parts of the continent was exhibited, and the frenzy caught. It spread wider and wider, and aided by various auxiliary passions, drew into its vortex great masses of the best citizens. The country again seemed on the point of rushing down the precipice; but fortunately its guardian genius yet presided over its affairs. The President of the United States again placed himself in the breach, and received on his buckler all the strokes aimed at the happiness of his country. He spoke to the people; they heard the voice of their father; they listened and became calm. He ratified the treaty; and the people said, "It is done, and must it not be supported?" He has done it, and is it not right? They listened and were appeased, they read and were convinced, they discovered their first errors, acknowledged and renounced them.

\* See Mr. Monroe's book, pages 10 and 84, 85, where this declaration is acknowledged and justified.—*Author of the Speech.*

But not so the party whose object was war against England, at all events. They saw in this treaty the death of their hopes, the final frustration of all their projects; for this treaty took away all cause of quarrel between the two countries; and they resolved to make one grand effort for its destruction, which, being accomplished, all the ancient disputes would be reinstated, with new aggravation; and a rupture would be rendered by so much the more certain as there could be no faith in any new accommodation. To this object, they bent their whole force, and this House was the place chosen for the attack. When the treaty came before this House to be carried into effect, doctrines new to the constitution, and incomparable with its existence were introduced, in order to destroy it. The treaty-making power was attempted to be rendered subject to the control of this House; as the power of appointing foreign ministers was now attempted to be rendered subject. The treaty was attacked through the sides of the constitution; a war was sought by the overthrow of our government, and the violation of our plighted faith. But a firm resistance was given to these attempts. Enlightened discussions spread the truth before the eyes of the people. Warned by the errors into which they had before been drawn, and roused by the magnitude of the danger, they rose in their might, and the party was dismayed; they spoke and it trembled; they put forth their hand and touched it, and it sunk to the earth.

Thus again, Mr. Chairman, were the projects of these gentlemen confounded. Thus again were they prevented from effecting their purpose, so much desired, of driving this country into war with England and the fraternal embraces of France.

The remaining history is known. The French under pretexts so frivolous that not one gentleman on this floor has been found hardy enough to defend them, have quarrelled with us on account of this treaty; because by terminating our differences with England, it cuts off all hopes of our being drawn into war against her. In this quarrel France proceeded, avowedly, on the ground of our being a divided people, opposed to our own government, and attached to her, repels all our amicable advances, meets them with new injuries, and declares that before she will listen to us we must tread back all our steps, reverse our whole system of policy, break our treaty with England, and admit her own construction of her treaty with us. In this critical and alarming situation of affairs, the same description of persons, the same individuals even, who so perseveringly attempted to bring us into the war against England, according to the views of France, who have so uniformly and with so

much zeal supported all the pretensions of France, now come forward and make a direct attack on the Executive, the tendency of which necessarily is to divide it from this House, when there is the utmost need of union, and withdraw from it the confidence of the people, when that confidence is more than ever essential. What is this but a continuation of the same system? And are we to be blamed for seeing in this attempt a new effort, to throw this country into the arms of France, by rendering the government unable to resist her; by forcing it from weakness to submit to her mandates; to break in obedience to them, its treaty with England, and substitute in its place an alliance offensive and defensive with her?

If this be not the object of gentlemen; if it be not their intention thus to serve their country by reducing it to the situation of Holland, how are we to reconcile their present with their former conduct; their eagerness for hostile measures formerly, with their tame submissive spirit now; their zealous opposition to every thing like negotiation formerly, with their equally zealous opposition to every thing like resistance now? If this be not their system, then all that I can say about their present measures, contrasted with those pursued by them on a former occasion, about their former eagerness for alliance, with one foreign nation, and war with another, contrasted with their present declamations against all sorts of foreign connexions or intercourse, is to exclaim, in the eloquent language of the gentleman from Pennsylvania, that those measures form the last leaf of that book, wherein are written the inconsistencies of party.

Whether this system of war and alliance, this system of fraternity with France such as the Dutch now enjoy, and hostility under her orders against all her enemies; this system so steadily pursued, but so often defeated, shall now at length begin to triumph, I consider as the question now to be decided. It is now to be decided whether an important step shall be taken, towards compelling our government through debility to submit implicitly to France, towards laying this country bound hand and foot at the feet of that haughty domineering nation. To take this step, to commence the triumph of the fraternal system, I take to be the object as I know it to be the tendency, of the inroad on the executive power attempted by this amendment. Hence it is that I oppose it with the warmest zeal, and with all my might; and if my opposition shall contribute in the smallest degree to its defeat, I shall neither regret the time I have occupied, nor apologize for the trouble I have given to the committee.





Thos. Lodge's Father







## THOMAS ADDIS EMMET.

THOMAS ADDIS EMMET, one of the most eminent advocates of the nineteenth century, was a native of Cork, Ireland, where he was born in the year 1764. His father, Robert Emmet, was a physician of respectable standing, and his mother is described as a woman of superior intellect and accomplishments. At an early period of life, Mr. Emmet was designed for the profession of medicine, and with that view was placed in the University of Dublin, and subsequently at the medical school in Edinburgh, Scotland; from which institution he graduated, a doctor of physic, in 1784. Among his fellow students here, were Doctor Samuel Latham Mitchell, since celebrated as the pioneer of scientific research in America; Sir James Mackintosh, Doctor Rogers, of New York, and Caspar Wistar, of Philadelphia.

While at Edinburgh, Mr. Emmet employed himself very industriously. He wrote a medical thesis in Latin at the time of taking his degree, which was selected for its merit, and published in the *Thesaurus Medicus*, by Smellie, the distinguished naturalist. The disposition of his mind, however, tended to forensic, rather than to medical pursuits; and so conspicuous was he as a speaker, that he was at this early period the president of no less than five debating societies. One of these societies embraced the whole extent of politics, literature, metaphysics, and political economy.

For the purpose of acquiring a more complete knowledge of his profession, Mr. Emmet, on closing his studies at Edinburgh, visited the most renowned medical schools on the continent, and, after travelling through Italy and Germany, returned to Ireland, with the intention of commencing practice. But the death of his elder brother, Christopher Temple Emmet, changed the course of his life. This brother was a member of the Irish bar, and is spoken of as one of the first men of Ireland. The vacancy produced by his death, it was determined Thomas Addie should occupy, and he at once set off for London, where he commenced study in the Temple. Here he spent two years; occasionally attending the courts at Westminster, where he often heard Erskine in the most splendid efforts of his eloquence. Returning to his native land, he was admitted to the bar in 1791, and commenced practice in Dublin. Soon after, he was married to Miss Jane Patten.

Mr. Emmet rose immediately to a conspicuous place at the Irish bar. He rode the circuit with Curran; and in the opinion of many, was his superior in talents, legal attainments, and general information. But this was not the time for him to realize his hopes of legal preferment. The condition of his country, impoverished by the cupidity of the English, the dark and cheerless prospect that opened upon her destinies, engrossed his attention. The resources and industry of Ireland had been regarded by the English as the legitimate objects of their unbounded desires, and the policy of their government had been directed, so as most readily to appropriate them to the use of the more aristocratic and favored subjects of the nation. While this unjust system had been carried out until it appeared to be the primary principle of the government, the progress of social and political intelligence brought the Irish people into direct collision with the authority of Great Britain.

It was during this period of suffering that the French Revolution broke out. The doctrines of freedom, declared in that moment of enthusiasm, met with a ready response from thousands of Irishmen. They hailed the occasion as "the day-spring of hope and freedom," diffusing over the land of their fathers, a silent, but enthusiastic expectation of deliverance. The Societies of United Irishmen, which had been formed in 1791, to repeal the Popery laws, to extend the right of suffrage among the Catholics, and to work other reforms, were now revived, under a new organization, the basis of which was not reform, but revolution. They were established on a plan of secrecy. There was "an oath the most solemn and sacred. Protestants and Catholics—all religious sects, forgot their prejudices, and nobly rallied under one common standard. All their feelings, wishes, and hopes, were for Ireland. Her freedom and her prosperity, claimed all their thoughts and all their devotions."

In 1796, Mr. Emmet joined the United Irishmen, and soon after was placed in their chief executive committee, where he directed all his energies in labors of the most disinterested patriotism.

In 1798, the revolutionary organization had become perfect throughout Ireland, and the adherence of the people to its principles was most astonishing. "Perfect faith every where prevailed," says Haines. "Men died on the rack and expired beneath the pains of torture, and still they would not reveal secrets to the spies and ruffians of government." At this time, a military committee was formed, to prepare a plan of operations, and measures were taken to procure aid from France. Before they were ready, however, to declare themselves openly, their intentions were discovered by the British Government, through the treachery of one Thomas Reynolds, who had so far obtained their confidence as to be appointed a colonel in one of their regiments.

The leaders of the movement, among whom was Mr. Emmet, were now arrested and thrown into prison. This however did not prevent the general insurrection which followed a few weeks after. As the time approached, the dreadful notes of preparation were manifest in all parts of the country. In the interior the peasantry began to move in large masses to some central points. Night after night they were known to be proceeding along unfrequented roads to their places of rendezvous. The cabins throughout large tracts of country, were either deserted, or found to contain only women and children. The lower classes that were in the habit of flocking to the cities for employment, were no longer to be found in their usual places of resort. A general consternation prevailed. Even the measures taken on the part of the government promised no security. On the contrary, from their arbitrary and despotic character, they only tended to exasperate the spirit of disaffection. Martial law was proclaimed, and the people were sent to the prisons, until they could contain no more. Prison-ships were then employed, and many of the conspirators were informally executed, and many who were innocent were put to death in a summary manner. Deprived of their chosen leaders, the management of the revolutionary councils fell into the hands of less competent men. After a short but sanguinary struggle, and some partial successes in the counties of Wexford and Wicklow, the insurgents were defeated and entirely dispersed at the action on Vinegar Hill, by the forces under the command of General Lake, and in a short time afterward the rebellion was entirely crushed. A French force of about eleven hundred men, at length landed at Killala, on the northwest coast of Ireland, on the 12th of August; but it was too late, and in less than a fortnight they surrendered to Lord Cornwallis.

During his confinement in Dublin prison, Mr. Emmet experienced the greatest severity from the chief jailer. In speaking of this portion of his life, a short time prior to his death, Mr. Emmet said, that "he had a perfect idea of Sir Hudson Lowe, as the jailer of Napoleon. He so resembled his own jailer in a thousand particulars, that he could realize and believe all that Napoleon had dictated on the unfeeling and ruffianly deportment of the governor of St. Helena." The wife of Mr. Emmet was the only member of his family, who was permitted to see him, and when once admitted to his room, declared she would never leave it but with her husband. She was ordered by the officers of the prison to leave him, but she positively refused. Force was not used, but it was understood that in the event of her leaving, her return would be prevented;

it being natural enough to presume that an opportunity of locking her out would soon occur. But such a presumption was ill founded: she remained in the room for twelve months, and left it but once, and then under peculiar circumstances. Her child, then at Mr. Emmet's father's, was dangerously ill, and upon appealing to the jailer's wife, herself a mother, she was permitted to depart at the hour of midnight, and the next night at the same hour was suffered to return, without the knowledge of the jailer.

In the Spring of 1799, Mr. Emmet and his fellow prisoners were removed to Fort George, in the north-eastern part of Scotland, on Murray Frith. Here he remained three years, during which time he wrote a portion of the history of Ireland, which was printed at New York in 1807. From Scotland Mr. Emmet went to the continent, where he resided until 1804, a part of the time in Brussels and a part of the time in Paris. Here he did little else than recover his health and build up his strength, which had been greatly shattered during his protracted confinement.

In October, 1804, he sailed with his family from Bordeaux, and on the eleventh of the following November, arrived at New York. After some deliberation between the two professions, of which he was an able member, he determined in favor of the law, and was admitted to the Supreme Court of the United States. He now selected Ohio as his future home, and was making preparations to remove thence, when Governor George Clinton, hearing of his intention, sent for him and advised him to remain in New York, where his great talents would command patronage. The recent death of Hamilton had left a vacancy which Mr. Emmet could occupy. "Mr. Emmet replied that he would gladly remain in New York, but he could not practise without a previous study of three years, or perhaps six, in order to become a counsellor and advocate, such were the rules of court adopted in New York, and while he was studying law his family would want bread. Governor Clinton told him not to be discouraged; if the Supreme Court declined giving him a license, the legislature would give him one by express statute. Mr. Emmet changed his plans and commenced practice in New York, where he at once reached a prominent place in the profession.

In 1807 he entered the arena of politics, and became identified with the republican party. This circumstance deprived him of many of his clients; but his ability, learning and eloquence finally triumphed over party feeling, and they all returned. In 1812 he was appointed Attorney General of the State of New York. The following anecdote of his career in this station is preserved in the memoir by Haines:—"Mr. Emmet repaired to the county of Chenango to try an indictment for an attempt to procure the vote of a member of the legislature by bribery and corruption. The proceeding excited strong party feelings. Elisha Williams and Mr. Foot, formerly an eminent counsellor and advocate residing in Albany, were opposed to him. The latter had his task assigned him—he was to brow-beat Mr. Emmet. In the discharge of this duty, he stated, among other things, that Mr. Emmet's promotion to the office of Attorney General was the reward of party efforts, and that in conducting this prosecution, he was doing homage for that office. He gained nothing by his assaults. When Mr. Emmet came to this part of his speech, he stated the accusation as it had been made by his opponent, and replied, 'it is false, and he knew it. The office which I have the honor to hold, is the reward of useful days and sleepless nights, devoted to the acquisition and exercise of my profession, and of a life of unspotted integrity—claims and qualifications which that gentleman can never put forth for any office, humble or exalted.' " This severity afforded a salutary lesson, which ever after secured him a respectful treatment at the New York bar.

Another characteristic anecdote is related of Mr. Emmet, by Sullivan. While he was pursuing his profession of counsellor at the bar of the Supreme Court of the United States, he was accustomed to carry a simple eye-glass loosely in his hand, which he frequently applied to his eye when addressing the court or jury. On one occasion in the year 1815, when opposed to Mr. Pinkney, of Maryland, this gentleman resorted to some personalities in the course of his argument against Mr. Emmet. Bringing his eye-glass to his eye, Mr. Emmet thus addressed the court, referring to Mr. Pinkney, who had lately returned from a foreign mission: "May it please your honors, I know not where the honorable gentleman learned his manners; but if in his late experience at foreign courts, he obtained them there, I am sure he could have kept no company;

and if he took them with him, it is a great pity he did not leave them there," which reply, delivered with a slight brogue, was very effective.\*

Mr. Emmet continued his professional labors until the time of his death. His devotion to business was unceasing. More than thirteen hours of the day were occupied in study and in the office. His evenings were passed in the investigation of cases; and he very frequently extended his studies until after the hour of midnight. In court, too, he was often engaged until a late hour. This incessant toil he was enabled to undergo by his temperate and regular habits. He mixed but little with the fashionable world, and rarely appeared at public entertainments.

"As an advocate," says one of his cotemporaries, "Mr. Emmet was unrivalled. Thoroughly imbued with the learning of his profession, he had also made himself minutely acquainted with the political history of Europe. For many years engaged in politics, and on terms of intimate intercourse with the first men of the age, he was enabled in aid of his argument, to give the happiest historical illustrations, and drawing on his memory, he overwhelmed his antagonists with parallels and striking contrasts, which they were not competent to explain or repel. The great charms of his eloquence, however, consisted in his earnestness and splendid imagery. Logical, clear and profound, he presented his argument in all points of view. Every principle which could be brought in favor of his clients was urged to the uttermost. His manner was deeply impressive. No one that ever heard him speak could forget his dignified, but earnest attitude, his forcible and unstudied gestures, obviously springing from the impulse of the moment; his powerful and expressive voice, whose very tones carried conviction, and above all, that noble exhibition of passion, imagination and reason; all combining and concentrating in one powerful, and often irresistible appeal to the hearts and understandings of the audience. No orator knew better how to enlist his hearers on the side of his client, or to avail himself of that sympathetic feeling, which in a deeply excited audience is communicated from bosom to bosom, until the jurors themselves, yielding to the influence, find a justification for the verdict they determine to give, in the glistening eyes and excited countenances of the surrounding spectators.†

In the year 1827, at the October term of the Circuit Court of the United States, Mr. Emmet was engaged in several important cases, among which were the celebrated Astor cause, involving the title to a great part of Putnam county, New York; the trial of Lieutenant Percival, on a charge of extortion, and the case of the Sailors' Snug Harbor. On Wednesday, the fourteenth of November, while attending the trial of the latter cause, he was seized with an apoplectic fit, and on being carried home, expired in the course of the following night.

#### THE DEFENCE OF WILLIAM S. SMITH.

This speech was delivered by Mr. Emmet in the trial of William S. Smith, who was charged with being concerned in preparing a military expedition, set on foot in the city of New York, and intended to be carried on against the dominions of Spain, in South America, at a time when peace existed between the United States and Spain.‡

\* Sullivan's Familiar Letters on Public Characters.

† See American Annual Register, for 1827-8-9, vol. 4, part 2: and the Memoir of Thomas Addis Emmet, by Charles G. Haines; to which the editor is indebted for the material of this sketch.

‡ This expedition is known as *Miranda's Expedition*. A general account of it was published in New York in 1808.

GENTLEMEN OF THE JURY: I assume it as a fact, which cannot be denied, and which is clearly to be inferred from the manner of conducting these proceedings, as well as from the parties who appear against the defendant, that this is emphatically a State prosecution. Impressed with a conviction of that fact, I did not think, at the commencement of this court, that it would have become my duty, during its sitting, to address a jury; for when the defendant came forward and averred upon oath, that he had acted with the knowledge and approbation of the Executive; when he threw down the

The trial of Mr. Smith took place in the Circuit Court of the United States, for the New York District, in July, 1806-- See *Lloyd's Report*.

gauntlet of investigation on that point; when he indicated, as the witnesses, by whom he meant to prove his assertion, the very heads of departments themselves; when he made the utmost exertions to procure their attendance, and avowed his intention of appealing to their oaths, I confess I believed that the public prosecutor would not have deemed it conducive to the honor of his cause, or the exalted character of the Executive government, to urge on the trial of this State prosecution, till those witnesses, whose presence we have not been able to procure, and whose absence is attributed, without contradiction, and upon oath, to that very Executive, had come in and deposed as to the facts alleged in the defendant's affidavit. I thought that the magnitude of those considerations would have overpowered the littleness of legal discussions; and that this cause would have been postponed by common consent, until it could be brought forward with all its circumstances; and a jury, and the world at large, enabled to form a correct judgment of the nature and justice of this prosecution. But it has been thought advisable to pursue a different line of conduct. We are forced on to trial, without the benefit of our whole means of defence; our witnesses are wilfully absent; our testimony is maimed and mutilated; we are tied and bound, and cast into the furnace; but still we hope that you, like the angel of God, will walk with us through the fire.

You, gentlemen, are taken from the mass of your fellow-citizens; it is, therefore, natural to apprehend that you may be influenced by those prejudices and misconceptions, which have been disseminated through the community; and it becomes my duty to endeavor to remove them. Against General Miranda, and the object of his expedition, I have heard and read some malignant calumnies, which only could have originated with mean and mercenary beings, who never yet sacrificed a selfish feeling to a public principle; whose hearts never sympathized with the sufferings of a slave; nor swelled with the mighty hope of delivering a nation. The district attorney, in his opening address to you, did not permit himself to adopt those calumnies in their entire extent; he is incapable of doing so, for his sentiments are liberal, and his manners mild. Sufficient, however, fell from him, to give to them somewhat of color and countenance, and to enlist your passions and prejudices against General Miranda, and all concerned in his expedition, among whom he charges the defendant with being one. In particular, I remember, he termed Miranda a fugitive on the face of the earth, and characterized the object of the expedition as something audacious, novel and dangerous. It has often struck me, gentlemen, as matter of curious observation, how speedily new nations, like new-made nobility and emperors, acquire the cant and jargon of their station. Let me exemplify this observation, by remarking, that here, within the United States,

which scarcely thirty years ago were colonies, engaged in a bloody struggle for the purpose of shaking off their dependence on the parent state, the attempt to free a colony from the oppressive yoke of its mother country, is called "audacious, novel, and dangerous." It is true, General Miranda's attempt is daring, and if you will, audacious: but wherefore is it novel and dangerous. Because he, a private individual, unaided by the public succor of any state, attempts to liberate South America? Thrasybulus! expeller of the thirty tyrants! restorer of Athenian freedom! wherefore are you named with honor in the records of history? Because, while a fugitive and an exile, you collected together a band of brave adventurers, who confided in your integrity and talents—because, without the acknowledged assistance of any state or nation, with no commission but what you derived from patriotism, liberty and justice, you marched with your chosen friends, and overthrew the tyranny of Sparta, in the land that gave you birth. Nor are Argos and Thebes censured for having afforded you refuge, countenance and protection. Nor is Ismenias, then at the head of the Theban government, accused of having departed from the duties of his station, because he obeyed the impulse of benevolence and compassion towards an oppressed people, and gave that private assistance which he could not publicly avow.

Of General Miranda it is true that he has been a wanderer from court to court, like Hannibal, supplicating assistance for his country. He served in Florida, as your ally, during your revolutionary war; and there, from becoming interested in your contest, from contemplating the prospects that were opened to you by the possession of independence, he first conceived the project of emancipating South America. From your own altar of liberty he caught the holy flame, which has since inextinguishably burned within his bosom; which has driven him from his home, his family, his social circle, and domestic endearments; which has marked and checkered his past life with misery and misfortunes; but which I hope will, hereafter, make him the illustrious instrument of redeeming from bondage a noble country, highly favored by nature, but desolated by man—a wretched country, in which the blessings of heaven wither before the touch of tyranny.

When the armies of France seemed to be the vanguard of liberty in Europe, we find Miranda among her most distinguished generals. From the rulers of that republic he received promises and assurances of assistance for his long-meditated project; but alas, gentlemen, the promises and assurances of governors and rulers are only calculated to deceive those who confide in them to their ruin. Spain, having made peace with France, asked for the sacrifice of Miranda; and it seems, gentlemen, that when two nations are at peace, if one of them asks from the other for the sacrifice of an individual, the demand is irresistible. Miranda was dragged before a rev-

olutionary tribunal; but that body, composed on somewhat of jury principles, feeling, as I hope every thing partaking of the nature of a jury always will feel, indignation at being made the instrument of such an abomination, loosed and liberated the devoted victim.

From France he passed over into England;

But to his country turned with ceaseless pain,  
And dragged, at each remove, a length'ning chain.

In England, had General Miranda consented to a transfer of dominion over his country, and to its being subjected to the British crown, he might have arrived to the highest military honors and fortune: but this man, who is accused of being a political intriguer, rejected with disgust the proposals of that intriguing cabinet, and took refuge in America—"the world's best hope."

Here, having soon perceived the clouds which were gathering in our hemisphere, he fondly hoped that the storm would roll towards the Andes, and that the thunder of heaven was at length about to burst upon Spanish domination. With what assurances or promises, with what hopes or expectations he left our shores, it is not, perhaps, permitted to me to assert; but if his object be to give happiness to the wretched, and liberty to the slave, may he fulfil for his country the omen that is contained in his name—a name that surely indicates no common destiny. For in whatever clime the contest is to be carried on; whoever shall be the oppressor of the oppressed, may the Almighty Lord of Hosts strengthen the arms of those that fight for the freedom of their native land! May he guide them in their counsels, assist them in their difficulties, comfort them in their distresses, and give them victory in their battles!

Respecting the character of the defendant, Colonel Smith, it is surely unnecessary, gentlemen, for me to trouble you with many words. He is an old revolutionary officer, that fought under the eyes, and lived in the family, of the illustrious Washington, whose honorable certifies he bears, as the monuments of his fame. The war for independence, that kindled in him and General Miranda the same love of liberty, by its consequences connected them in the strictest friendship. It is, therefore, natural to suppose, that Colonel Smith may have become acquainted with many of the secret wishes and views of Miranda; but for whatever part he may have taken, if, in truth, he has taken any part in promoting the expedition of which you have heard so much, and whatever may be your verdict, he has already suffered the anticipated punishment of removal from an office, which, to an exemplary son, brother, parent, husband, and friend, was the sole support of himself and family.

I have thought it necessary, gentlemen, to premise these observations for the purpose of removing any unfavorable impressions, under which you may have hitherto labored; and

also because I trust they will induce you to scan, with a severer scrutiny, any allegations of criminality in men, whose objects and conduct, even as imputed to them, when judged of on the broad and universal principles of human rights, of morality and justice, and when estimated by their tendency to promote the improvement or happiness of mankind, must appear essentially meritorious and honorable.

It is not, however, gentlemen, exclusively of these broad and universal principles, that you are required to decide this cause. The indictment rests on more circumscribed and partial foundations, which, although they will not receive equal respect from the world at large, and will probably never be thought of by posterity, must still be submitted to your peculiar attention. The indictment is framed on a certain statute\* of the United States, concerning which, permit me to make a few preliminary observations. This statute, when first enacted, was merely temporary, and for a very short duration. The attorney-general, in his opening, stated the present to be the first trial that has taken place on this section of the law, and that it was enacted to prevent certain enterprises set on foot by M. Genet, at that time the French minister, in favor of his own government. A somewhat different history of the law has been this day given, by which it would appear, that expeditions, similar to the present, were not within the contemplation of the legislature; it has been stated, and I believe correctly, that this law was made with a view to certain land expeditions, then forming, under the influence of French counsels, within the boundaries of the United States, against the Floridas. And it must be confessed, that the words of the act most peculiarly and naturally apply to military expeditions, or enterprises by land; neither the word maritime, nor any other substitute for it, having gained admission into the law. If, however, the attorney-general's statement be correct, and that this temporary statute was directed against M. Genet, let the singular circumstance which marks this trial, be a beacon to warn political men against the unnecessary making of severe laws, from temporary or party motives: for who would have thought, when this clause was enacted, in the vice presidency of Mr. Adams, with direct hostility to M. Genet, that the first person who should be tried under it, would be the son-in-law of Mr. Adams; and that the first judge, who should preside on such a trial, would be the brother-in-law of M. Genet! And while I hold up this strange coincidence, as a warning to statesmen against the abuse of temporary power, let it be a caution to you also, gentlemen of the jury, not to be induced, by occasional or party feelings, to give to such a law as this an overstrained or severe construction; for if you do,

\* The statute, here referred to, was passed June 5, 1794, and was entitled, "An act, in addition to an act for the punishment of certain crimes against the United States."



God knows how soon it may recoil upon yourselves.

We are told, however, that this statute is entitled to peculiar respect, because it is declaratory of the law of nations; and as some sentiments of that kind were expressed by the court, I feel inclined to treat them with the greatest deference. To me, however, I confess it does not appear that this statute has any characteristic of a declaratory law: it is temporary and penal; it fixes penalties not known to the law of nations, and in creating crimes, goes beyond that law; for it punishes the inchoate acts of parties, and almost their very intentions, although the law of nations confines its punishments to actual aggressions. If it were a declaratory law, wherefore should it be limited to a temporary duration? The law of nations is universal and perpetual; the fair exposition of its meaning should be so likewise. I have shown it was not intended to be perpetual; neither is it universal. What civilized state in the world has a statute similar to this? England has acts punishing crimes against the law of nations, but none in its nature or object analogous to this. America did very well without such a law, until a temporary circumstance, in the ebullition of party contest, gave it birth; and then Congress seemed to feel that in departing from the policy of other states, it was making a dangerous experiment; on no other principle can you account for its having limited the existence of the law to so short a period as two years. Neither is this statute necessary for enforcing the law of nations; that law is part of the common law of England and of the United States, and if any man offend against it, he may be punished, without the intervention of this statute.

The foregoing observation leads me to notice an argument urged yesterday, by the learned judge from Connecticut, who appears at this bar as a counsel for the prosecution. He facetiously jumbled together, the Medes, the Perses, the Elamites, the Syrians, the Egyptians, as the persons employed in Miranda's expedition; and having contended that from their want of commissions, they might, if taken, be executed by Spain as pirates, he necessarily inferred that they were also indictable under this statute. The force of that conclusion does not strike me; for I can easily conceive many cases of piracy, which do not fall within the purview of this law. Suppose Congress had actually declared war against Spain; even then the fitting out of a military expedition by private citizens, without a commission from government, would be piracy; but most assuredly it would be no offence against this act. From his argument, however, I should draw a very opposite conclusion, and urge on you, gentlemen, that as offences against the law of nations can be punished both at home and abroad without the intervention of this statute; as they are punished in every other country without the existence of any similar statute, you should not be called

upon to give to it an extended interpretation, under pretence of enforcing the law of nations; but should, on the contrary, be careful to construe it strictly in favor of the accused: pursuant to the acknowledged principle, that all penal statutes are to be strictly construed.

Before you proceed to a minute examination of the testimony in this cause, while the host of witnesses that were examined, are passing in review before your minds, you must doubtless be struck with the immense chasm that is caused by the absence of those officers of government, and other persons, whose attendance we have fruitlessly endeavored to procure. Perhaps that very absence renders them more decisive witnesses in our favor. Tacitus, the Roman historian, speaking of the funeral procession of Junia, a noble lady, in which, according to the custom of her country, the images of her ancestors were displayed, but in which, from compliment to the existing government, those of Brutus and Cassius were studiously kept back, remarks that Brutus and Cassius were pre-eminent above the rest, from the very circumstance, that their images were not to be seen. So in the course of this trial, I trust you will feel that the most pre-eminent and important witnesses, those which in this State prosecution speak most conclusively to your consciences as honest men, are the heads of departments, and the other gentlemen upon whom we rested that broad defence, by which we were willing to abide and to disclaim any minute or strict constructions of the law. Now, however, that we are forced to take refuge within those minute and strict constructions, let me entreat you to keep in remembrance, that there is not only no moral guilt in the alleged expedition, with a concern in which we are charged; but that, when judged of by those unchangeable principles which we invoke, it is entitled to universal commendation; let me remind you that we are forced to answer this charge at the present moment under circumstances of very peculiar hardship; let me direct your attention to those adversaries of every description, which appear marshalled against us; and let me call upon you, gentlemen, appointed as you are to be a bulwark in favor of the virtuous and innocent, to stand for them between prosecution and punishment; let me require you to avail yourselves of that unquestionable right, which, in a free country, I hope a jury will always possess, and which in a State prosecution I hope a jury will always exercise, of deciding in criminal cases, both upon the law and fact. Nor will your doing so, in the present instance, impose upon you any very difficult task; for no complicated questions of law can now arise. There is only one principle to be kept in mind, that penal statutes are to be construed strictly, so as to prevent the penalty's being inflicted upon any one, who has not offended against the rigorous construction of the law. In making that construction, gentlemen, you would derive no assistance from an intimacy with legal learning:

a correct knowledge of your mother tongue and of the ordinary meaning of the words and phrases used, is amply sufficient. No adjudged cases or precedents can be cited as to the interpretation of this act; no assistance can be derived from the exposition that similar laws may have heretofore received: for no similar law exists in England or elsewhere. The maxim, that penal statutes are to be strictly construed, is indisputable; under the guidance of that polar principle examine the act; apply the evidence to each of its clauses; and I am much mistaken if you do not find yourselves fully competent to form a correct decision, as to the meaning and application of the law, without embarrassment, or difficulty.

The attorney-general, in his opening address, adopted the arrangement which a perusal of the statute naturally suggests, by examining into the facts which are to combine together to constitute the crime, in the order in which they are found in the act. My associates have pursued the same course; and it seems to me that you cannot adopt a better method of analyzing this law, and of examining whether all the facts that enter into the formation of the offence, be proved, than by considering every member of the sentence separately and in the order of construction. To proceed then thus, the defendant cannot be found guilty, unless it be proved to your satisfaction, that within the territory or jurisdiction of the United States, he began, or set on foot, or provided, or prepared, the means of an expedition, which must be proved to be a military expedition or enterprise; it must also be proved that such military enterprise was to be carried on from the United States against the territory or dominions of some foreign prince or state; and it must lastly be proved, that such prince or state was one with whom the United States were at peace.

As to the first point, that whatever was done, was done within the territory or jurisdiction of the United States, there is no dispute. But what proof have you that the defendant either began, or set on foot the expedition, whatever it may have been? Colonel Smith, it appears, knew that Miranda had some plan to be put in execution; but the whole course of the testimony goes to prove that he declined being concerned in it, without the approbation of the President; how then can he be said to have begun or set on foot an expedition, which was planned by Miranda, and which the defendant would take no part in, till it was laid before and approved of by our executive? Besides, if you examine the facts in chronological order, it will be very apparent that Colonel Smith did not begin or set any thing on foot.

Captain Lewis and Mr. Armstrong purchased arms, &c., several days before Colonel Smith is alleged to have done any thing. Amidst the multiplicity of witnesses produced, none of them has said any thing about the defendant's beginning or setting on foot, and Fink is the

first, and indeed the only one, who deposes any thing respecting his providing or preparing the means for the expedition, whatever its nature or object may be: let us, therefore, bestow upon him a few moments' attention. You will, I trust, agree with me, that very little weight is due to his testimony, when you reflect that a person was brought here, with whom he had negotiated, who was not made the dupe of his capricious and unauthorized lies. One was to carry the mail; another was to be of the President's guard—and so on. This man having implicated himself in a great mass of criminality, by entrapping the unsuspecting with falsehoods of his own invention, comes here to elude the punishment, which, from his wanton lies, he deserves better than any of the accused, and purges himself by swearing against Col. Smith; but I ask you, gentlemen, is such a man, so circumstanced, to be relied on against such a man as Col. Smith?

In order to probe the credibility of his witness, and to expose his motives clearly before you, I asked him, as you may remember, if he was not afraid of a prosecution, and he answered no; I then asked him why he was not afraid of a prosecution; the answer to that question I was not permitted to obtain. Let me, however, repeat it to you, gentlemen, why is that man not afraid of a prosecution? His conduct, as confessed by himself, not only lays him open to it, but his aggravated impositions seem to demand it. Why, then, after so many indictments have been preferred and found on this subject, is he not afraid of the punishment due to his misconduct? Either because he has made an absolute contract for impunity, if he gives important evidence, and then he stands here as an accomplice turned informer, the most odious and questionable witness that can be produced: or, if he has not made such contract, he hopes at least, that by fixing the offence on Colonel Smith, he can withdraw himself from danger—and feels, therefore, the strongest and most direct interest in attaching the whole weight of culpability on the defendant. The question I proposed, until I was better instructed by the decision of the court, seemed to me to be one of the fairest that could be put, on a cross-examination; why any opposition was given to the witness's answering it, I cannot pretend to say; but that kind of protection afforded to an avowed approver, will perhaps assist you in deciding what degree of importance you will attach to his testimony.

I may be mistaken, but it appeared to me, as if there was a design of imputing to the defendant the misrepresentations of Fink as his agent; and that, therefore, all the men who had been entrapped were made to state those misrepresentations over and over again, with the view of rendering the defendant unpopular, and of fixing on him a considerable stigma; but let me ask you, gentlemen, is there the slightest reason to suppose that he authorized those misstatements? They are abhorrent from his nature

and character; and surely it was not necessary that Colonel Smith should suggest untruths to Fink, in order to assist him in a project of kidnapping. That man's imagination seems to me to furnish sufficient funds, whenever he may think fit to draw on it, for a falsehood. A remarkable instance occurred of the attempt to fix this stigma on Colonel Smith, in the production of what is facetiously called the muster-roll. The heading of that paper, proceeded from the defendant, and after it was gone through, these words, "for the President's guard," were significantly read as endorsement—but, on further inquiry, it turns out that the endorsement is not in Colonel Smith's handwriting; that it was put on after the paper had been given out of his hands, and in short, as I presume, that it is one of the witticisms of Mr. Fink.

This paper, however, is urged as evidence that Colonel Smith provided the men named in it, for a military expedition. Before I consider what was the object of the expedition, let me insist upon a fact, which is amply proved by the testimony before you, that the contract made with Fink, as the agent of Colonel Smith (even should you believe that suspicious witness), was rescinded by mutual consent; and that after the men were at entire liberty, they entered into a new contract with Captain Durning, under which they embarked—so that even supposing every thing said respecting the military nature of the expedition to be true, the defendant did not, in contemplation of law, provide the men who went in the *Leander*. In every criminal case there is a *locus penitentie*, and Colonel Smith profited by it. By annulling the first contract, he is released from all criminal responsibility—and he cannot be answerable for any new contract entered into by those men, with a stranger.

Let us now consider what evidence there is, that this is a military expedition. Commerce in arms and ammunition was unrestrained, and vessels allowed to arm themselves as they thought fit, when the *Leander* sailed for Jacquemel, in St. Domingo; with which island, a lucrative and beneficial trade has been for some time carried on. Moreover, all men are at liberty to leave the United States, and whether they are paid for going, or have subscribed their names to a contract, provided it be of a civil nature, the law is not broken. The gentleman, that furnished the ship and purchased the cannon, arms, and ammunition, which were taken out in the *Leander*, as well as many other merchants, was long in that trade; and now for the first time, the military nature of the cargo has been made evidence of a crime. It is fully proved to you, gentlemen, that the *Leander* sailed *bona fide*, and in fact, from this to St. Domingo; and that the persons, who went out in that vessel, were to be considered as passengers; and that after they arrived there, they were at liberty, if they thought fit, to return back. What evidence does this furnish of a

military expedition's being fitted out from this port; even supposing that, at St. Domingo, when the defendant had no longer any connection with, or control over it, it may have assumed a military appearance? As between New York and Jacquemel, there is no evidence not perfectly reconcilable with commercial objects; and no further than that port, does the defendant appear to have any concern with providing, or preparing, or setting any thing on foot. The men who went in the *Leander*, went to St. Domingo as passengers, in a civil capacity; it was not until after their arrival there, that they exchanged their liberty for the submission of soldiers; and until they had consented so to do, men cannot be said, under the strict construction requisite for a penal statute, to have been provided for a military expedition. Therefore, on this point also, the evidence for the prosecution has failed to attach any criminality to Colonel Smith.

The next question that presents itself for consideration, taking the statute for our guide, is, supposing you have evidence enough, independent of extrajudicial rumors, to make you say the ultimate object of this expedition is military, yet does it come within the description of a military expedition to be carried on from the United States against any foreign prince? In order to make you perceive more clearly the importance of the words "from thence," in the statute, I shall follow the example of my learned friend who opened our defence, and read the section without those words, "if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for any military expedition or enterprise, to be carried on against the territory or dominions of any foreign prince," &c. If this were the law, it would undoubtedly comprehend the preparing and providing within the United States, of the means for a military expedition; even though those means were to be transported from the United States to some other place, and the military expedition to be carried on, from that place, against the dominions of a foreign prince. Such is our case, if you should think it proved that the expedition was military; and were the law such as I have just read it, you would be forced, as far as relates to this point, to find against the defendant. But the legislature did not think fit to take cognizance of the transportation of warlike preparations from the United States to any other place, even though they were there to be used as the means for carrying on a military expedition against a foreign prince. It confined the penalties of the law to those cases where the military expedition was to be carried on, immediately, and in the first instance, from the United States; and therefore inserted the emphatic and restrictive words "to be carried on from thence;" that is, to sail directly from here against the foreign prince or nation. No such thing was done in the expedition under your consideration; for the *Leander* sailed with some

arms and ammunition, and with some passengers, to St. Domingo. There, and not before, the passengers were, if they chose, to enter military service, and to receive commissions; if they did not choose so to do, they were to have their expenses paid, and passages provided for them back to the United States. At St. Domingo, also, the *Leander* was to be joined by the *Emperor* and *Indostan*, and two schooners; and the whole, when organized into a military expedition, was to proceed from thence against the Caraccas. This, however, it is said, is carrying on a military expedition from the United States against the Caraccas, via St. Domingo. Let me repeat the question already put by one of my associates; would an insurance on a voyage from New York to the Caraccas be violated by the vessel's going to St. Domingo? As merchants, you can answer that question. Why should going to St. Domingo affect the insurance? Because it is no longer the voyage insured: a voyage from New York to the Caraccas must be direct from the one place to the other, and is not the same as a voyage from New York to the Caraccas, via St. Domingo. Remember, then, that a penal statute must receive a strict construction, and what would not be a fair and sufficient description, in a mercantile instrument, of an enterprise to be carried on from one place to another, cannot be sufficient to satisfy the strictness of a penal law.

But the force of our reasoning, on this point, is infinitely strengthened by the circumstance, that the *Leander* went to Jacquemel, not merely for the purpose of touching there, but to make all the military equipments, (as the very witnesses for the prosecution depose,) and to rendezvous with other ships, that were to be jointly concerned in the projected military expedition. Let us test this question, not only by the mercantile language of insurance, but also, (as the enterprise is said to be military,) by the military acceptance of words. Suppose a commander-in-chief ordered several detachments, from different points, to rendezvous at a particular place, and having made the necessary arrangements, to proceed from thence against an enemy's post. Suppose the English minister directed embarkations from Portsmouth, Falmouth, and the Cove of Cork, that they should severally proceed from those places to the island of Barbadoes, and having joined forces there, that they should make a descent upon Caraccas; would it not be an expedition to be carried on from the place of rendezvous, Barbadoes, for instance, and not from any one of the places whence the detachment proceeded? So in our case, the expedition was to be carried on, not from New York, from whence the *Leander* sailed, but from Jacquemel, where all the forces were to collect, by previous agreement, and from which the military departure for the Caraccas was to be taken.

Some other considerations place this matter beyond a doubt. It is proved that when the *Leander* sailed from New-York, the arms, &c.

were in such bad order that she was in no condition to undertake any military operations, and it further appears, that every person who went out in that vessel, whatever his expected rank might be, went as a voluntary passenger to a friendly island, where he was to be at liberty to stay or return; or, if he preferred doing so, to enter into a military line, to enrol, and if he was an officer, to receive his commission. Surely, then, the friendly island, where the arms were to be put in proper order for military purposes, and where the passengers were to change their condition, and become soldiers, is the place where the expedition is to be considered as assuming a military character; and from that place you must consider it as carried on against the object of attack. The construction and force which I have given to those words, "to be carried on from thence," seem to me unanswerable; and in a case where so many motives should induce you to lean strongly towards an acquittal, you will rejoice at having found a resting place, on which your consciences may repose; and at the opportunity of absolving a man, who is free from moral guilt, and who, at the best, has been most rigorously dealt with.

There is yet another point for your consideration: supposing all the other requisites of the act to be established against the defendant, which is the very reverse of the truth, yet the expedition must be carried on against a nation "with whom the United States are at peace." This topic has already undergone so much discussion, that the force of our observations must have long since been impressed on your minds; I shall therefore be very brief. It is acknowledged that there are two kinds of war; one regularly proclaimed by the governments of two countries, and one actually existing *de facto* by the hostile conduct of one country against another. So peace, the opposite of war, must be capable of receiving two explanations. Now, keeping in remembrance the maxim I have so often impressed upon your minds, that penal statutes are to be strictly construed, and that every word, employed in describing the offence, is to be received in the sense most favorable to the accused, it necessarily follows, that, if one of the significations of the word "peace" will take the defendant's case out of the statute, that signification must be preferred. It would be sufficient for me to show, that, in common parlance, and the ordinary intercourse of life, that word is frequently used in the sense for which I contend. But I shall go further, and show, that even the Congress, which passed this law, has, in its legislative acts, employed the word in the same way. For that purpose let me request your attention to an act passed the 27th of March, 1794, chap. 12, entitled "an act to provide a naval armament," (vol. 3, p. 24.) It begins by reciting, that "the depredations, committed by the Algerine corsairs on the commerce of the United States, render it necessary that a naval force should be provided for its protection." The act declares no war; Con-

gress did not exercise its constitutional function of declaring war; no power was even given to the President of making reprisals; but only an authorization to purchase or provide, and man four ships. The act then concludes, "that if a peace shall take place between the United States and the regency of Algiers, no further proceeding shall be had under this act." If a peace shall take place! Where was the war, without a declaration by Congress? How did it originate? Not in the manner indicated by the constitution; nor in the provisions of that law; but only in the depredations committed by the Algerines on the American commerce. Here, then, is a legislative acknowledgment, that depredations of that kind may destroy a state of peace; and that Congress sometimes use that word in a sense no way opposed to war declared according to the forms of the constitution. Please to observe, too, that this act was passed on the 27th of March, 1794, and that the law, on which the defendant is indicted, was passed on the 5th of June, of that year. We only ask you, then, to construe the word "peace," in the statute of the 5th of June, in the same sense that Congress manifestly employed it on the 27th of March preceding—as expressing a state which is destroyed, with respect to any foreign power, by the depredations of that power upon our commerce; and of course, by any unwarrantable hostile aggressions. But the counsel on the other side say, there cannot be war, under the terms of the constitution, unless it be declared by Congress. Here they intrench themselves; but how do they refute the conclusion, which results from the statute I have just alluded to? In truth, it seems to me, that the constitution is very unnecessarily and incorrectly brought into this discussion; and that any inferences from it are perfectly inapplicable. That instrument was formed to prevent the encroachments of one branch of the government upon the others, and of all upon the people; but it had no reference to any thing except the limitation of the powers of the public functionaries. The President undoubtedly cannot, by his own authority, place the country in a state of war; but does it follow from thence, that any other country cannot destroy the state of peace between itself and us, by its actual aggressions? That is a thing de facto, not depending on the clauses of our constitution; and in that light it was considered by the Congress, which passed both this law and the law against the Algerine depredations. Suppose a military expedition had been fitted out by individuals, to be carried on from the United States, against the Algerines, during the existence of that law, would the district attorney have gravely contended, in the face of its last clause, that the regency of Algiers was at peace with the United States, because Congress had not formally declared war against it? The true construction of the statute, on which the defendant is indicted, I take to be this—it is meant to go further than the law of nations;

but for whom? For those nations, whose unequivocal amity and friendly dispositions towards us, entitle them to something more advantageous than the bare benefit of the law of nations—those who preserve only a formal peace, while they are inflicting the injuries of war, do not deserve, and shall not enjoy the privileges which we confer, by our own code, upon sincerely friendly, and therefore favored states.

This brings us to consider what has been the conduct of Spain towards the United States. The district attorney admitted that he should be under the necessity of proving every thing that enters into the statutory description of this offence, and among other things that the United States were at peace with Spain. In the course of the trial, however, he has offered no proof of that disputable fact: not even by reading the magical words which compose the first article of the treaty of San Lorenzo. I beg leave, therefore, to propose to him this dilemma. Either there is no proof of which you, gentlemen, as jurors, can take cognizance, that the United States were at peace with Spain, and of course the defendant must be acquitted; or the state of the two countries, as to peace or war, is a matter on which the jury is warranted to form an opinion, from circumstances of public notoriety; and then, of course, the discussion of those circumstances of public notoriety is open to us; notwithstanding the court judged fit to reject, as evidence, the President's message and the public documents, by which we offered to prove the relative state of the two countries. In the absence of proof, on the part of the prosecution, as to the existence of peace, let me state a case by way of hypothesis. Suppose Spain had made encroachments upon our territory, had captured our citizens upon our own boundaries, and had committed depredations on our commerce, such as, by inference, constituted the Algerine war, could it be said that we were at peace under circumstances that Congress itself declared destroyed peace between the United States and Algiers? Has the testimony for the prosecution proved that a state of things different from this existed?—and it should prove every thing necessary for the conviction of the defendant. But it will probably be at present contended on the other side, that you may ground your verdict as to this point, on public notoriety—if so, I ask you, is it not publicly notorious, that what I have just now hypothetically laid before you, was in truth, the real conduct of Spain? The district attorney, in his opening speech, said that this prosecution was to do justice between Spain and the United States. By this statement I think he accurately arranged the parties concerned, and justly placed the United States on the side of the defendant. Spain is the prosecutrix; she has come into your courts, saying she was at peace, while she was making you feel the calamities of war. She asks from you the benefit of one of your own peculiar

laws, such as is not to be found in the code of any other nation, which was enacted from internal considerations, and in favor of other states, that observe towards us a conduct unequivocally friendly: and she asks from you this gratuitous favor, as a right, while your territories are yet marked by her unequivocally hostile aggressions. Let her take the benefit of the law of nations against your citizens, as she would be obliged to do against British subjects, if they had pursued a similar conduct. The executive disavows their acts, and leaves the individuals, if taken, without national protection; surely such disavowal and abandonment on the part of our executive is an ample sacrifice to the etiquette of courts. Suppose an indictment on this statute had been framed in the Mississippi territory, against any brave Americans, who, without the orders of government, might have made a military expedition within the Spanish lines to rescue the Kempers. The construction of the law that would be applicable to their case in that country, is equally applicable to the case of the defendant in New York. What then, let me ask you, would be the astonishment and indignation of a jury there, if the public prosecutor informed them, that notwithstanding these outrages were unatoned for, and perhaps likely to be repeated, yet it was expedient to sacrifice those gallant adventurers to her resentment. Would they not, by their verdict, teach the government to answer thus, to such an insolent demand on the part of Spain? Before you ask the sacrifice of American citizens, restore those you have carried away, abandon our territories, make satisfaction for your depredations on our property and commerce, renounce your hostile plans; and after you have purged away your own offences, should any new injuries be done to you, then you shall enjoy the benefit of all our laws. Let your verdict give government the same instructive lesson; you are the protectors of a fellow-citizen against the vindictive oppression of foreign states; you have the power of resisting their insolent demands; you have nothing to do with their vamping menaces; to them I trust government has already replied, that America adopts Fingal's advice to the son of Ossian—never seek the battle with the foe—nor shun it when it comes.

I have thus, gentlemen, examined the statute at some length, and given to it a construction, which, if you believe it correct, will undoubtedly entitle the defendant to an acquittal. I shall give you an additional reason why you should believe in the correctness of my construction. General Miranda's expedition was a subject of general conversation in this city some time before it sailed; it was carried on under the eyes of the government, and known to many, whose political communications with Washington city, are no doubt accurate and frequent. This circumstance, even exclusive of the inferences that must arise from the non-attendance of the heads of departments, is

sufficient to convince you that the expedition was carried on with the knowledge of government. Why then was it not prevented? Most assuredly because the executive saw that it could be carried on, and indeed was carrying on, consistently with the laws of the United States. If it were otherwise, if the expedition were a violation of the law, with such ample time for deliberation and action, would not the President have exercised the power vested in him by the seventh section of this statute, and hindered the sailing of the *Leander*?

To render this argument more striking, let me remind you of the evidence of Colonels Swartwout and Platt, by which it irresistibly appears that the defendant had no doubt he was acting with the knowledge of government, and therefore would do nothing intentionally to violate the law. Let me, also, recall to your memories Captain Duncanson's letter, which you have read. From that letter draw your own conclusions, as to the extent of the President's knowledge; but it is certain that Captain Duncanson, who presided in Washington, was apprised of the expedition, and informed that Colonel Smith would have the disposal of some military commissions. Was he, think you, the only man in Washington, to whom those things had been told; or do you believe that the President and officers of government were ignorant of reports that had obtained very general currency? His letter is dated the 20th of December last, and the *Leander* did not sail until the 2d of February.

The expedition was, therefore, known at Washington, six or seven weeks before it took place, and no effort made to stop it. Surely, then, the President and Secretary of State, and other officers of government, considered it as perfectly consistent with our laws. I confess, gentlemen, I attach very great weight to the opinions of those gentlemen; I sincerely esteem and respect them all; Mr. Jefferson, I believe to be not only an enlightened patriot, and a consummate statesman, but also to comprise in his extensive information, a very accurate knowledge of the law. He had learned, I presume, that the *Leander* was bound, in the first instance, for Jacquemel; he knew that the transporting of arms, ammunition, and military stores to St. Domingo, was not prohibited; he knew an American, as well as a foreigner, might travel; he probably considered, as I do, every person that went in the *Leander*, as in the eye of the law, only a traveller, till he should assume a military character in a foreign port; he saw that no military expedition was to be carried on from the United States; and he felt that there was nothing in our relations to Spain which could lay claim to the extraordinary exertion of peculiar friendship on the part of the United States; nor any thing in the object of the expedition itself, that could alarm his benevolence or patriotism. This view of the subject does justice to all parties; it marks the wisdom of the President in abstaining from

interfering with the expedition; it marks the prudence of the chief by whom it was conducted, and the cautious observance of the law by those who acted under him; and it will mark your discrimination, justice, and integrity, if you adopt this construction of the statute, and give a verdict of acquittal.

I could wish, before I conclude, to make another observation. This trial has by some been considered as a party question, and I understand that my conduct, in the defence of the gentleman indicted, has been talked of, by the weak and ignorant, as something like a dereliction of my professed political principles. I pity such party bigots, and have only to assure them, that no feelings such as they possess, shall ever weaken my zeal for my client. But as to my political principles, they are a subject on which I am too proud to parley, or enter into a vindictory explanation with any man. In me, republicanism is not the result of birth, nor the accidental offspring of family connections—it is the fruit of feeling and sentiment, of study and reflection, of observation and experience—it is endeared to me by sufferings

and misfortunes. I see gentlemen on that jury between whose political principles and mine there is not a shade of difference—we agree as to the hands to which we would confide the offices, honors, power and wealth of the republic. I trust we also agree in this, that nothing can be more injurious to the due administration of the law, than that political considerations or party prejudices should be permitted to ascend the bench, or enter into the jury-box. That pollution of justice has given rise to many of those abominations and horrors which have disgraced and desolated Europe. I adjure you, do not mingle the spirit of party with the wholesome medicine of the law: for if you do, most assuredly, sooner or later, even-handed justice will commend the ingredients of the poisoned chalice, to your own lips. I entreat you, exercise your prerogatives and discharge your duty in the spirit of uprightness and mercy—do not suffer the defendant to be sacrificed as a sin-offering or a peace-offering; and if he is to be made the scape-goat, on which are to be fixed the faults of others, give him, at least, the privilege of escape.

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#### SPEECH IN GOODWIN'S TRIAL.

The following is the argument of Mr. Emmet, delivered at the trial of Robert M. Goodwin, on an indictment of manslaughter, for killing James Stoughton, in New York, during the winter of 1819.\*

GENTLEMEN OF THE JURY: If I could entertain a thought, that by any thing which may fall from me on this occasion, I might advance my personal reputation, I should only cherish a vain and idle expectation: if my mind were occupied with any thing so light, I should shrink from a comparison with those able associates who have preceded me. Still I am not discouraged from entertaining the hope, that in the exercise of my professional duty, I shall be able to add some observations, though not of equal force, yet somewhat conducive to the success which we all desire; but which I desire with different expectations from those which have been expressed by one of my associates. I know and feel that there is at stake in this trial, that, which if lost, will bring ruin on my client, and spread desolation over a numerous, amiable, and respectable family. But whether it be that nature has given to me a more sanguine and enthusiastic disposition than to others, I know not: I must confess, however, that

I address you with strong and ardent hopes. And if I can instil into your minds but half the conviction I feel of my client's innocence, his acquittal is secure.

The district attorney, in stating to you this case on behalf of the prosecution, said, that the excitement produced by the lamentable event which has caused this trial did honor to our city. He spoke truly; but he must admit that it has formed a frightful impediment to the due administration of justice. It was honorable to our community, because it bespoke universal horror at the atrocious crime imputed to my client: but there is another feeling capable of doing still greater honor to this city, the noble renunciation of prejudices and antipathies, formed with precipitation and error, and discarded under the influence of cool investigation and deliberate inquiry. I rejoice to perceive how rapidly they have disappeared amidst the vast assemblage who have listened to this trial, as the testimony became developed; and assuredly it will redound to the honor of this community, to find that an unprotected stranger against whom every arm was nerved, and every voice was raised under a belief of his guilt, can safely commit his dearest interest (unknown and unprotected as he is) to a jury taken from that incensed community, and receive from their patient attention and examination of his case, his own acquittal and a recantation of those preconceived opinions, which seemed calculated to overwhelm him in disgrace and ruin.

\* The trial took place at the Court of General Sessions of the Peace, held in and for the body of the city and county of New York, in February, 1820.—See *Sampson's Report*.



And indeed, gentlemen of the jury, I should not indulge in the expectations I have avowed to you, if I did not believe I was, addressing men who will not suffer any thing to sway their minds but the testimony and the merits of the cause, who when placed in that seat of justice, will shake off and cast behind them all those rumors and prejudices which have hitherto preoccupied the public mind: and which, I must confess, took possession even of myself. For when I first heard of the dreadful calamity which closed the life of Mr. Stoughton, I partook strongly of that excitement which agitated the whole city: but I had not conversed one half hour with my unfortunate client in his prison, till I felt a conviction which has ever since continued gaining strength in my mind, that he is free from reproach as to all criminality of act or intention. And it is, because I think it impossible an intelligent jury can be led, on due consideration of the evidence, to arrive at a different conclusion, that I so confidently hope that the hour of his deliverance is at hand.

Gentlemen of the jury, as by the constitution of this State it is your part and your duty to form your own conclusions of law as well as of fact, in every criminal case, so it is my duty, with the most entire confidence nevertheless in the court that presides, to lay down the law applicable to the evidence, as well as to comment upon the authorities cited by my adversaries. And in doing so, to prepare your minds for a more accurate examination of the evidence which I have to discuss.

The first doctrine I have to remark upon, is the position insisted on by our adversaries, that the burthen of the proof is placed upon the prisoner. This position is founded upon an authority which I shall endeavor to explain, and to repel its application to this case. It is found in Foster's Crown Law, p. 255, as follows: "In every charge of murder, the fact of killing being first proved, all the circumstances of accident, necessity, or infirmity, are to be satisfactorily proved by the prisoner, unless they arise out of the evidence against him; for the law presumes the fact to have been founded in malice, until the contrary appeareth." That, gentlemen, is a doctrine I do not mean to question; but the application of it seems to me to be strangely misunderstood. The rule of law supposes a thing which the writer intended not to be overlooked, for he has caused it to be printed in italics, "the fact of Killing being first proved." It is not because a death is proved to have taken place, that any man who is accused is put to the necessity of proof, until the act of killing by him is first established: and why? "for the law presumeth the fact to be founded in malice till the contrary appeareth;" that is, the fact which the evidence establishes to be his act.

But before the law will raise any presumption against any man for any act, the doing that act must be first proved against him.

There is also another qualification: "unless

the circumstances, &c., arise out of the evidence produced against him."

We have examined but one witness as to the facts. He has not given a new character to the circumstances, which were detailed by those of the prosecution. On that ground, therefore, no burthen of proof is thrown on us, but you are to draw the natural inferences from the facts stated. But what is the true meaning of the rule itself? An indictment avers facts, and states an inference from these facts: when it says that a man committed the crime of killing a person with malice aforethought, then it is an indictment for murder; and in that case you are not bound to prove the malice aforethought, if you prove the killing by the party accused. Then it is that it lies upon him to prove the circumstances not averred, but which, when proved by him, are competent to rebut the first presumption, and to alter the character of the transaction—but the law never intended to say that any part of this presumption or of this rule, is to dispense with clear, sufficient and adequate proof of the facts laid in the indictment. And, gentlemen, the first ground we take is, that the evidence did not warrant the conclusion that the death of Mr. Stoughton was occasioned by any act of the prisoner; however unexplained it may be by him, or inexplicable by those witnesses who, though they were present, yet were too much agitated to see distinctly. But till the killing is first proved by competent testimony, in the manner laid in the indictment, a jury is not warranted in drawing any inference. My associate counsel has truly told you, all that you are to try is to be found in the indictment: it is your text book: it was, therefore, read to you when the prisoner was given to you in charge. Let us, therefore, refer to it: it states that Robert M. Goodwin, in the peace of God and the people, in the fury of his mind made an assault, and that he made that assault with a certain drawn sword, which he in his right hand then and there held, and that he gave him with that instrument, so held in his right hand, a mortal wound near his ninth rib. It states that he with the said sword did thrust and penetrate his body.

Now, gentlemen, there may be, and there are, averments in that indictment, which are not essential to constitute the crime, and their proof may be dispensed with, but the truth of every fact material to constitute the crime must be proved as laid, or must be a necessary consequence from facts which are proved. You have no right to extend the accusation, and say that he is guilty of any other thing but that which has been given to you in charge. Let us then see what averments in that indictment are essential and necessary. I do not mean to mislead you by saying that certain parts of this record may not properly be considered as mere formalities; but I must confidently say, that these parts are essential, and the proofs of them indispensable: first, that he made an assault upon James Stoughton: and



that term assault is to be understood in the legal acceptation of the word. I admit that if one commits an excessive outrage upon another who has first assaulted him, and kills him, that is an assault within the term of the indictment; but if there is not an excess on the part of the prisoner, nor any other act, such as, if he were indicted for an assault, would be sufficient to convict him, the averment that he made an assault is legally falsified. Secondly, this also is essential in the framing of the indictment: that he with a certain drawn sword or dagger, which he in his hand then and there held, him the said James Stoughton did stab, thrust and penetrate, giving to him a wound on some part of the body that will correspond, or nearly so, with the description in the indictment. By taking this indictment therefore as your guide, you will distinguish what you are to find and pass upon; but observe still further, you are not to find any of those facts, however properly charged, of the certainty of which you have a reasonable doubt; and as it is the business of the prosecutor to establish with certainty every fact he has averred, doubt alone gives to my client the right to his acquittal. You cannot satisfy your consciences by finding some thing, I know not what, but some thing that you should suppose nearly allied to the offence given you in charge. Exceptions to this rule were stated and referred to, in hopes of inducing you so to do. All the authorities relied on by our adversaries are to be found in 2 Chitty, Cr. Law, 734. From them we can collect that an allegation of one kind of death is never supported by evidence of another essentially different; so that if it be alleged, that the murder was committed by stabbing, and it be shown to have been by drowning or poisoning, the prisoner must be acquitted. This is the general doctrine; the exceptions are, that the particular species of weapon need not always be exactly proved: for instance, the allegation of assaulting with a staff, is proved by evidence of violence offered by striking with a stone in the hand; and an indictment for murder by one sort of poison, is supported by proof of murder by poison of another kind. But the act of the party is always material, and so far as relates to that, the cause which conducted to the death, must be always proved as laid. The instrument or the poison may be immaterial, because it makes no act of the party, and therefore some certain act done by him, if proved as stated, will maintain the indictment, though done with a different weapon; but in every instance, the act of the party which caused the death must be proved as charged. Take the first instance, of the man charged with striking with a stick, and proved to have struck with a stone. In recurring to the original authority in 1 East. P. C. 341, it is manifest that it was a stone, not thrown as a missile weapon, but held in the hand, and used as a staff to strike with. The act of the party is the same in both cases; and I may confidently say, there is no case

where a conviction was ever had, if it was proved he struck with a staff, and it was charged to be a death occasioned by the throwing of a stone. It has been only when the manner of using a thing, or the nature of the killing, was identically the same. So it would make no difference if it were charged to be a poisoning with arsenic, and proved to be with sugar of lead, or corrosive sublimate. It is his act that must be proved, and his act is the same in both.

The counsel here referred to several approved precedents of indictments, and read from them to show with what particularity the manner of the death and the act of the defendant was always laid, being the most material of the indictment. See *Mary Blandy's case*, Cr. Cir. Ass. p. 293, which was a charge of poisoning, and the manner and contrivance of the defendant in laying the poison for the deceased, that he might take it in ignorance, is stated with great particularity; and see other precedents of like nature. *Ib.*

Now it is manifest that if the prisoner can be indicted at all, the only way in which this fatal accident can have taken place was, by the knocking or throwing Mr. Stoughton down by Mr. Goodwin, when the dagger was on the ground. Let me then illustrate my position from the indictment just read. Suppose a man gives a shove to another, by no means calculated to cause his death, but that in consequence of that shove, he falls into a cellar and fractures his skull, or into a pond where he is drowned, would it be correct, in either case, to say he gave him a mortal wound? Neither would it in this case. I repeat it, you may lay the act as far as concerns the weapon, with a certain latitude: but the act of the party from which death has ensued, must be described truly without any latitude whatever.

This principle then, if I have established it, is, in my judgment, entirely applicable and fully sufficient for the acquittal of my client, even though it should be believed that a homicide was committed by an unlawful act of his. Even supposing, for argument sake, that he was responsible for the act of shoving or casting the deceased on the ground, yet the indictment should state that the death resulted from that casting on the ground.

It follows, therefore, that under this indictment, Mr. Goodwin cannot be convicted, though you should believe that death was caused by the fall of Stoughton on the weapon, and that such act was produced by an unlawful act of Goodwin, unless you believe he gave a thrust or actual stab. For though the law might, in that case, visit upon him the consequences of the illegal act, yet, under this indictment, he cannot possibly be convicted.

There is a doctrine which stands upon ancient and venerable authority, which has been in some respects questioned, but which, for the purpose of my argument, is, I think, established even from the discussions it has undergone (2 Hale, 184): where it is laid down, that if the

indictment charges that the prisoner gave a mortal wound, without saying that he struck, it would not be sufficient. A later author, Mr. Hawkins, seems to doubt of this, but let us see upon what authority: (Hawk. Pl. Cr. vol. 2, ch. 23, § 82.) It is not safe, he says, to omit the word *percussit* (that he struck): and by the authority of some books, he says, it cannot be supplied by stating that he gave a mortal wound (*dedit mortale vulnus*), yet in Coke's Reports, he adds, this doctrine seems to be questioned, neither do I find any particular reason why the word *percussit* should be of such absolute necessity; for it is not pretended in the case (Long's case), which is the chief foundation of this opinion, that it is a word of art appropriated to this use: but all that seems contended for there is, that where the death was occasioned by any external violence, coming under the notion of striking, "it must expressly appear that a stroke was given." It is, therefore, clear, even from Hawkins' authority, that when a stroke is laid as the cause of the death, proof of a stroke is indispensable. The using of the word strike or stab, may perhaps sometimes be dispensed with; but never the proof of a stroke or a blow, if the death be charged to have proceeded from a stroke or a blow. And I therefore contend, that if the fact of defendant's striking the deceased with that dagger, and thereby giving him a mortal wound, be not here proved, then this indictment is not proved, and no conviction can follow, even though the prisoner should be guilty of some other act which might, perhaps, be construed into an act of manslaughter. Until some act of striking is proved, either by direct evidence, or such combination of circumstances as make it a necessary inference, we are not obliged to take the burden of the proof upon us. The public prosecutor has never reached that goal he proposed to arrive at, when he put that averment upon the record; and if he only left a doubt upon your minds, whether there was a stroke, and has not altogether satisfied your judgment and your merciful consciences, and your oaths, on that subject, then he has not yet put us on our defence.

But, gentlemen of the jury, there are other principles more important to the character and reputation of my client, which also conduce to his acquittal. I began by saying, that in every act of manslaughter, the act of the party causing the death must be a voluntary one; and I wish this position to be accurately taken down, and marked and understood by you all, because to me it seems clear as demonstration can make it, that manslaughter cannot be committed, unless the act which caused the death was voluntary. If I doubted as to my own correctness on this position, I should derive infinite confidence from the definition given by Judge Parker on the trial of Selfridge (p. 158), that the crime of manslaughter consists in the unlawful and wilful killing a reasonable being, without malice express or implied, and without any reasonable

cause. The act then must be wilful, as well as unlawful. One may kill another wilfully, and be innocent: the act occasioning the death may be unlawful, and he may be innocent: but this definition, so coupling these terms, is one that is perfect, and never can be shaken.

But let not the word wilful be misunderstood. What then, it may be asked, is its meaning? I say, proceeding from the will of the party. I admit the death may be manslaughter, though it happened in consequence of an act, by which the accused did not mean to cause death; but it must be a voluntary act, whatever its consequences may be, before it can render the party guilty of manslaughter. Where any part of the system of our law has a relation to, or connection with another, the parts so connected are mutually strengthened and confirmed. I therefore support this doctrine, by recurring to an authority I have already cited: when, if it said that the words strike or stab must be laid in the indictment, it is meant that it may be put in issue whether the defendant did that unlawful and wilful act of striking or stabbing. That, then, is the meaning of the definition by Mr. Justice Parker, in which the law is thus briefly expressed, that manslaughter is the unlawful and wilful killing, &c., though without malice either express or implied. And I go farther, and say that this is, without exception, the doctrine which must be deduced from every English case that has or can be referred to. To prove this, I the rather take the cases which the learned counsel opposed to me have cited, because I am bound to presume and do presume, that they are selected with the greatest care and judgment, in their own favor.

Here the mayor asked Mr. Emmet whether he had found in any book of authority that the word wilful was held essential in the definition of manslaughter—to which Mr. Emmet replied that he had: he cited the words of Judge Parker, and only added this commentary of his own, on the word wilful, that it must be the voluntary act of the party killing. He then proceeded.

The first case cited merely went to the distinction between murder and manslaughter. It is said in 1 Hale, P. C. 475, that if A throw a stone to kill the poultry or cattle of B, and the stone hit and kill a bystander, it is manslaughter, because the act was unlawful, but it is not murder. God forbid, I may add in passing, that it should be held so here, where it would inflict upon the party the dreadful penalty of the law; and I must confess that from my earliest studies in the profession, I have never ceased to regard this doctrine with horror. When such a case is put as that of a boy shooting playfully at a bird on the road, and unintentionally killing a man, a stranger against

whom he could have no malice, or his playmate, or his brother, and he is adjudged to have committed manslaughter. Though I admit this to be the law of England, yet I have never read the position without shrinking into myself. In that case, however, the act of the boy was voluntary—he intended to shoot; the killing was by an act he intended to commit, though he never calculated the consequences of that act to be the death of another. In the case of Ward, the boxer, (1 East. 270.) Ward intended to hit the blow, although he never thought that death would follow from it. So in Sir John Chichester's case, fencing in sport with his servant, who probably might have been reared up with himself in habits of familiarity from early youth, and whom, to use Lord Hale's words, he very well loved, from the accident of his scabbard's being stricken off by his servant, the point of his rapier accidentally wounded his groin, and Sir John was found guilty of manslaughter. This, to all human feeling, must appear one of the harshest cases in which technical subtlety ever prevailed to overwhelm a wretched man, and afflict the afflicted. But still it confirms my position: for there the defendant intended to make the thrust; and though he did not intend the death, it was his undoubted and voluntary act that caused it. In Snow's case, the boy who committed the crime had come home intoxicated and insulted his father. His brother threw him down and gave him some blows; he drew his penknife and without intending to cause his brother's death, but indulging his passion, he intentionally used his knife for the purpose of making a stab at his brother. Indeed, without going through the tedious range of all the authorities in the English books, I will venture to affirm that there is not one where the wilfulness of the act did not enter as an ingredient into the crime of manslaughter. I shall now allude in confirmation of this position to two cases stated by Hale, referred to by Mr. Hoffman, and also cited by the opposite counsel; but which did not, according to the intimation of the court on yesterday's argument, go as far as we could wish. While I now read the passage in 1 Hale, P. C. 480, I request you to observe that there are two situations contemplated in this statement: First, A assaults B, who flies to the wall, holding his sword, knife or pike in his hand; or falls holding his sword, knife or pike in his hand; A runs violently upon the knife of B, without any thrust or stroke offered at him by B, and thereupon dies: this is death by misadventure, (per unfortunium.) Where is the difference of principle, or even of circumstances, between one of the alternatives put by Lord Hale and this case? A assaults B, who falls, holding his sword, knife or pike in his hand. A falls on it without any thrust or stroke offered at him by B; and thereupon dies; this is death by misadventure. The principle does not depend upon B's actually falling; but upon A's falling upon

the sword, without any thrust or stroke offered at him by B. Neither does the principle of that case in any respect turn upon any part of the law of self-defence; for then Lord Hale would have said it was a case of justifiable homicide, and of a nature entirely distinct from misadventure, which is only excusable. The falling of B is only mentioned to manifest that the wound must have been unintentional; and the first assault by A, and B's retreating to the wall are only mentioned to show that B was doing no wilful act; but the true state of the case was, that one party merely held the weapon on which the other fell. And it proves all I say, that if in a casual rencounter one party meets his death, but without thrust or stab given by the other, or voluntary act causing the death, it is misadventure. To say that one held the sword and the other ran on to it, is no more than to say, that if there is no intent in the party to do that very act which caused the death, it ceases to be manslaughter, and becomes misadventure. It is true, it is the person assaulting that has met with the misfortune, and such was also the fact in that instance; but on the subject of manslaughter it stands on equal footing in the law, whether the assaulter or the assaulted fell, though in murder it is different: the making of the assault is then material; but when the thrust or stab has never been given, or the death arisen from a voluntary act, it cannot be manslaughter, and must be misadventure. So in page 493 of the same book; if B, having a pitchfork in his hand, A assaults him so fiercely that he runs upon the pitchfork, B offering no thrust at all against A; though this be a very difficult matter to suppose, yet, if the fact be supposed to be so, he says, B *forfeits no goods*, because it was the act of A himself; and some have said rather that in that case A is *felo de se*. This case also keeps up the uniformity of the principle, that manslaughter must be by a voluntary act; and though for every voluntary act he must abide the penalties of unforeseen and unintended consequences, yet he is not to answer for a misfortune not occasioned by any act of his.

Now let us see, the cases being disposed of, whether I am not based upon a still more solid principle than book authority. Does not justice require that the act causing the death should be voluntary? For God forbid that he who had no criminal intention should suffer for a crime. If the words found in the indictment, "in the fury of his mind," are meant to distinguish the act from a mere casualty, surely the construction should be at least that the act should be voluntary.

The doctrine I am contending for is the law of England, and deduced from English authorities; but it is infinitely more important to insist on it here, than it could be in that country, for there the punishment of manslaughter is discretionary with the court; but here it must be at least three years imprisonment in the

State prison. If I were pleading for my client at an English bar, I should probably not deem it material to his interests, that I should dwell upon the position I have just advanced; because from the gradual alteration of times and opinions, which would protect him from a forfeiture of goods, it would be little worth the pains of any English lawyer, having once established that the casualty was not imputable to him, to cite cases or argue very strenuously for an acquittal. His client would, upon conviction, be fined perhaps one shilling, confined one day, and then discharged. For what reason I do not know, but the fact in this State is, that all discretion in the punishment is taken from our courts of justice; and my client must, if convicted, inevitably be sentenced to a punishment more bitter than death to a man of lofty feelings and honorable character, nurtured and bred with sentiments worthy of his station in life.

When it appears from certain acts of the legislature, that every man found guilty of manslaughter, should be sentenced to the State prison for three years, should it not also be inferred, that the legislature meant nothing inconsistent with reason and justice; and that those were not to go for three years to the State prison, whose offence was not deserving of such a punishment. If it made the law, it gave the construction, and must have meant that no man should be so punished for an act free from criminal intent. Even in England, in those cases where the degree of the offence is regulated by the standard of property, you will find the most austere judges instructing the jury that they are authorized to find the property of less value than every living being knows it is; and they thus rescue the victim from a punishment which their humanity tells them is beyond his guilt. Am I wrong, then, in saying that your oaths should bind you to the very strictest investigation of the evidence according to my principles; and your consciences should not yield to any thing that does not bring demonstration home; and that therefore you will stop and see whether the testimony compels you to believe that the dagger was not on the ground at the time of the fatal mishap; and that the prisoner did more than hold it in his hand, without the slightest intention of doing an act that could contribute to the death. But if you should go farther and believe with me, that in truth the weapon, at the time of the accident was lying on the ground, and that in the course of the conflict, Mr. Stoughton tripped or fell, and, in so doing, received the mortal wound, how much more conclusive are my arguments!

These considerations, if you feel them with the force that I do, will supersede the necessity of all further discussion, and put an end at once to the prosecution, whether Mr. Goodwin's conduct in the conflict was unlawful or not; for if the essential thing is wanting, if it was not a voluntary act, then the unlawfulness

alone can never make it amount to manslaughter.

The definition of manslaughter cited by the opposite counsel from Hawkins, b. 1, c. 20 § 1, is, in a technical sense, correct; but I shall render it more exact to the minds of men not accustomed to legal discussions, by recurring to Lord Coke himself for the definition. (8 Inst. 56.) He says: "There is a homicide which is neither aforethought nor voluntary, as if a man kill another by misadventure or accident." And here let me, in passing, remark, that the very division of his subject adopted by Lord Coke, "homicide which is neither aforethought nor voluntary," i. e., which is neither murder nor manslaughter, very strongly justifies the insertion of the word wilful, by Mr. Justice Parker, in his definition of the latter offence, and exceedingly fortifies the position on that subject, which I have already discussed. But to return to my argument. Lord Coke in the same passage proceeds: "And homicide by misadventure is, when a man doth an act that is not unlawful, which, without any evil intent, tendeth to a man's death." Now Serjeant Hawkins has substituted for these words, "without any evil intent," the words, "without any intent to hurt." And he has, with little necessity, substituted the words, "lawful act," for "act not unlawful." They surely mean the same thing, though the latter expression may convey the idea more accurately to your mind. Then to this definition of Lord Coke I will adhere, and to avoid the confusion that arises out of these words, "without any intent to hurt," I shall say with Lord Coke, without any intent tending to the man's death. And then if the intention be not to do the act, and if the act be not unlawful, death arising from the two combined together can alone amount to manslaughter. The counsel on the other side may, perhaps, insist that to either of these definitions should be added this phrase, viz: *without due caution*. This has been often said, and I do not think it necessary for us to contend against it; but in admitting it, let me apprise you how you should receive it, by reading a passage from a most able criminal judge, Foster, 263, who says, "I cannot help saying that the rule of law I have been considering in this place, touching the consequence of taking or not taking due precaution, doth not seem sufficiently tempered with mercy. Manslaughter was formerly a capital offence, as I shall hereafter show. And even the forfeiture of goods and chattels upon the foot of the present law, is an heavy stroke upon a man, guilty, it is true, of an heedless, incautious conduct, but in other respects perfectly innocent. And where the rigor of law bordereth upon injustice, mercy should, if possible, interpose in the administration. It is not the part of judges, to be perpetually hunting after forfeitures, where the heart is free from guilt. They are ministers appointed by the Crown for the ends of public justice; and should have written on their

hearts, the solemn engagement his majesty is under, "to cause laws and justice in mercy to be executed in all his judgments."

Now, gentlemen, if the mere forfeiture of goods calls for this merciful administration of justice: if this respectable judge thus speaks of tempering the rigor of the law, think of that terrible punishment that must follow upon your verdict of conviction. Temper your verdict also by that same mercy. You are not hunting after forfeitures of goods; but you are called upon to utter a fearful sentence, far more than forfeiture of goods, far worse to an honorable mind than death itself. You are not kings, nor bound by the oaths of kings: but you are bound by the precepts of the God you worship, as much as kings can be, to administer justice in mercy. That oath of the king, is only to fix in his mind the admonition of the King of kings, and which he gives alike to kings and subjects, who are equal in his eyes. It speaks only that command of God to man which is embodied in his oath, as a divine instruction to him and his people.

What is the nature then of this "due caution?" Where the lawful act is deliberately begun and carried on, there may be time for caution; and if it be possible to justify, before a jury of this country, a judgment like that against Sir John Chichester, it could be only upon this ground, that the killing was there in a dangerous kind of sport, which the parties had deliberately entered into; and then, perhaps, greater caution might be exacted. But here the circumstances were such that the mind of the defendant could not be composed, nor could he be self-possessed: the rule as to him must therefore be taken with great latitude. Let us illustrate the distinction by supposing a case. If a number of persons go on a boating party, it is a lawful act in every person: if the vessel should be upset, each would endeavor to save himself, which is also lawful. All might be saved, if all were cautious and deliberate: they cling to the keel, but one in his flurry shoves another off, who is drowned—would you sentence him to the State prison for three years, and give him as a reason that he had not used due caution in his exertions for himself? You could not do so; every merciful consideration would warn your consciences, that in such sudden emergencies no man is competent to the exercise of "due caution," nor master of the ordinary powers of his mind. The conclusion from this illustration is, that where the act takes place under circumstances which naturally destroy all self-command, the rule touching observance of due caution will receive a very large and liberal construction. But here I may passingly observe, that a caution greater than perhaps would be expected on such occasions, was manifested by this unfortunate prisoner, when he took the blade in his hand, and struck with the handle of the dagger in the manner described by Mr. Cambreleng.

I have now, gentlemen, stated to you the general principles of the law of homicide on which

we rely; and before I examine the facts entering into the merits of this case, let me advert to a piece of testimony which, under that law of homicide, I think should not have been introduced at all.

Major Smith was examined to prove that the prisoner procured from him the cane unfortunately containing the dagger which gave the wound, but the evening before the affray. If that fact could afford any inference, it could only be to affix a charge on my client, from which the grand jury have absolved him, and which you are not to try—from which he is not called upon to defend himself, and which he may well be unprepared with evidence to explain. But, gentlemen, that inference is most strained and uncharitable, and such as should never be applied to human actions.

Two gentlemen, friends from childhood, met under circumstances of conviviality well calculated to exalt their mutual attachment, and expected to separate again in a day or two perhaps for ever. The stick happened to catch Mr. Goodwin's eyes, as Major Smith held it on a chair, in a gay and unimportant conversation. Both had sticks not unlike each other, and my client proposed to exchange them as mutual keepsakes. Major Smith says it was done after a few words; that it was understood between them, the exchange was only made as a memento; and he did not know, that when Mr. Goodwin proposed the exchange, he was aware there was a sword in the witness's cane. If this is to be urged as a proof of deliberate and premeditated malice, what man can guard the most inconsiderate and thoughtless actions of his life from the foulest and most terrible construction? It would be unworthy of a jury to bestow on it a moment's deliberation; and particularly as it has no relation to the issue they are sworn to try.

In considering the facts really connected with that issue, the first question that presents itself is, was the act of Mr. Goodwin in his conflict with Mr. Stoughton lawful? or, to continue the use of the expression I have already adopted, can it come within Lord Coke's definition as "no unlawful act?" To decide this, consider it without adverting to that fatality which ought to have no influence on your minds in judging of the act itself, and which could only mislead you in determining on its legality or illegality in the abstract. Suppose the prisoner was defending himself on an indictment for a mere assault and battery, or in a civil action by the plea of *son assault demesne*; that is, that he was first assaulted by his adversary. This is the fair way of judging, as there is no law peculiarly applicable to manslaughter in this respect. The legality of Mr. Goodwin's act is to be judged of simply upon this ground; whether under the circumstances of the case, he could be found guilty of having committed an assault and battery. The opposite counsel endeavored to elude this test by citing authorities which are totally inapplicable to manslaughter. They refer to

East's Cr. Law, vol. 1, p. 239, where, speaking of homicide from transport of passion or heat of blood, the writer says: "In no case, however, will the plea of provocation avail the party, if it were sought for and induced by his own act, in order to afford him a pretence for wreaking his malice. As where A and B having fallen out, A says he will not strike, but will give B a pot of ale to touch him; on which B strikes and A kills him: this is murder." This authority is applicable exclusively to cases of murder and has no reference to the law of manslaughter. It is grounded upon the crafty words used to evade the law, "I will give you a pot of ale if you will strike me;" that show the previous and premeditated malice which is an ingredient of murder. But it has no application to a case of manslaughter, where malice is not at all in the question, and when the act stands simple and alone. So in 1 Hale, 457: "A and B are at some distance: A bids B take a pin out of the sleeve of a A, intending thereby to take an occasion to strike or wound B, which B doth accordingly, and then A strikes B whereof he dies: this was ruled murder. First, because it was no provocation when he did it by the consent of A. Second, because it appeared to be a malicious and deliberate artifice, thereby to take occasion to kill B." I therefore, gentlemen, set aside these and any other authorities concerning previous provocation, as relating to murder only and not to manslaughter; and then I contend on the general principles of the law of assault and battery, that the provocation alleged to have been previously given by Mr. Goodwin to Mr. Stoughton, cannot make his subsequent conflict unlawful. There is no doubt but that the deceased struck the first blow; for though Mr. Clark did not see it, Weed and Cambreleng did; and the district attorney, with that candor which has marked his proceedings throughout this cause, admitted the fact. It is enough for me then to say, without coming to the express definition of a "lawful act," under the authority of Lord Coke, that the prisoner's conduct was not unlawful.

Our adversaries, however, dispute this position, and contend that in the eye of the law, Mr. Goodwin committed the first assault by the pointing of his cane towards Mr. Stoughton; and for this they cite Hawk. b. 1, c. 62, §1. "It seems that an assault is an attempt or offer with force and violence, to do a corporal hurt to another; as by sticking at him with or without a weapon, or presenting a gun at him, at such a distance to which the gun will carry; or pointing a pitchfork at him, standing within the reach of it, or by holding up one's fist at him, or by other such like act done in an angry threatening manner." But, gentlemen, the doctrine there laid down is totally inapplicable to this case. The acts there specified were held to be assaults, because they were attacks upon the safety of another; they were intended for the purpose of committing personal violence, and begun and proceeding towards personal injury.

But here, the pointing of the cane was no more an assault than the pointing of the finger. It was an indication of the person, and nothing more. Let me remind you also, gentlemen, that in such a solemn proceeding as this, the defendant is entitled to the benefit of the legal definition of the offence charged upon him in all its parts and strictness. If the provocation appears to you, as I fear it must, to have been wrong, fully as I admit it, and deeply as it is regretted by my client more than by any other person, who with a contrite heart says through me, would to God it never had been given, nor the terrible consequences followed from it; yet neither that contrite admission of the party, nor the lamentable consequences of the act, are to deprive him of the benefit of the law in every shape. And the law says, that the pointing, not being with a view to a battery of the person, nor to any personal violence, was no assault; for that the intent of violence is a necessary ingredient to constitute an assault.

But that transaction, whatever may have been its character, was ended. Mr. Goodwin had gone on his way, as also had Mr. Stoughton; and with respect to the consequence of that act, all was past and over. The returning and following of Mr. Goodwin by Stoughton, was a new and distinct act, which should entirely be separated from the former in your consideration. If Mr. Goodwin had been the person slain, and Mr. Stoughton the person upon trial, he never could have availed himself of the defence, that his striking Mr. Goodwin was lawful; and if he could not so avail himself, though the calamitous accident has changed the situation of the parties, the act of Stoughton must continue unlawful; it therefore follows of necessity, that the resistance to it, and the conflict ensuing upon it, was "not unlawful." And, in truth, that case, where one said to the other, as an excuse, "take this pin out of my sleeve," would apply to Mr. Stoughton with all its severity, if he were upon trial, and not to Mr. Goodwin. I should be sorry to see such severity of construction administered at all; but, if it were, it could be only in respect to Mr. Stoughton.

It has been intimated that Mr. Goodwin's continuing the conflict after the deceased began to retreat, was unlawful, and gave that character to the subsequent events. I cannot, however, conceive that your verdict will ever sanction this doctrine. In East's Crown Law, v. 1, p. 239, the author, after observing that the punishment inflicted on any sort of provocation must not greatly exceed the offence received, adds, "This has been urged with caution, because in cases where the mercy of the law interposes in pity to human frailty, it will not try the culprit by the rigid rule of justice, and examine with the most scrupulous nicety, whether he cut off the exact pound of flesh." What was the duration of this affray, which, it has been intimated, Mr. Goodwin continued too long? Perhaps not half a minute at the utmost.

Two or three blows passed on each side in an uninterrupted scuffle. Mr. Stoughton retreated, not because he wished to give up the contest, but because he found his adversary somewhat stronger than himself, and, perhaps, in order to regain a vantage ground. Is such retreating, accompanied with preserving assaults and blows, sufficient to prevent a man from using violence to repel the continued violence of an aggressor, and for the purpose of self-defence? Where was the disposition of Mr. Stoughton to discontinue the conflict? When did he cease to attack the prisoner, or renounce the original purpose with which he commenced the assault, while he had the capacity to carry it into effect? Mr. Clark says, though perhaps somewhat mistakingly, that after the deceased rose up, he actually struck the prisoner. Mr. Phelps and Mr. Cambreleng say, he appeared determined to renew the attack; and Mr. Weir says, he made an effort to do so. This evidence is, I trust, sufficient to prevent the inference that Mr. Stoughton had given up the conflict, or that the prisoner was bound to suppose he intended doing so.

Mr. Goodwin is further charged with striking Mr. Stoughton when he was down. Permit me to say, that fact has no relation to what you are to try, unless so far as it affords an inference favorable to my client. Favorable indeed it is, because, as I shall hereafter show, it proves how both his hands were employed at the time he is said to have stabbed his adversary; and also, because it shows an unconsciousness of what had taken place. But remember, gentlemen of the jury, you have no evidence before you, and, I trust in God, the wide range of this earth could not produce the evidence, that Mr. Goodwin was that abandoned wretch who could have continued beating a man in the face, to whom he had already given a mortal wound. Would to God it had not—that no part of this tragedy had taken place; but it must at least serve to show that he never could be conscious of having stabbed his antagonist before that moment; and then, or after that, he certainly could not do it, since whilst his hands were both employed about his adversary's face, he could not then plant a dagger in his heart.

This brings me to the notice of a question asked of a witness, as if to make it testimony in the cause perhaps without intention. But it was asked, "Is not Mr. Goodwin a military man?" For what was that asked? Was it to exhibit him to you, gentlemen of the jury, as a skilful assassin? Is that an attribute belonging to your army? Was it in that quality your soldiers marched against your enemies, and fought the glorious battles of their country? Is that sarcasm applicable to your forces by sea or land? Does it come properly from one who owes, perhaps his existence, certainly his safety, and his present tranquil enjoyments, to the fatigues, the privations, the sufferings, the virtues and heroism of that army? If my client was a military man, was it in that school of

valor and honor that he could acquire the disposition of an assassin? Did he learn to be so in the battle of New Orleans, in that conflict, so glorious to our warriors, and fatal to their foes? Did he learn it fighting any where in the defence of his country, as our soldiers always did openly and face to face with their enemies? Was it in any of those exertions of body and of spirit, by which a foreign foe was gallantly combated, and nobly driven from our shores? What could he have learned in that school inconsistent with the character of a gentleman, and the honor of a soldier? He certainly would have learned there to meet his enemy in the most deadly combat, and face to face, whenever the necessities of his country and the duties of his calling should require; but if he is a military man, there is a nobleness in his occupation, which, in itself, should check the surmise, and silence the whisper, that he could be an assassin. It may, indeed, have given him too exalted notions of what are called the laws of honor, and may have led to his using those words of provocation, and those slaps of insult, which both he and I deplore; but most assuredly, it never taught him to use a sword or dagger in any secret, base, or hidden manner, to work the death of an unarmed adversary.

Let us now, gentlemen, examine into the circumstances of those blows. I have said they were only intended to affront or degrade, and not to inflict any injury by personal violence. I need not give a stronger proof than the bare fact, that Mr. Stoughton was lying on the ground when he received them, and not in the attitude of defence, and yet they did not leave a mark or bruise. If the prisoner struck with force, when no blow he struck was returned or parried, the marks would have testified to the atrocity of the act. Whatever blows then were given, when Mr. Stoughton was on the ground, as they left no trace, so they were intended to leave none. But it is alleged, these blows were given with a cane, from which a dastardly intention of personal injury is inferred. On this subject there is a direct contradiction of the witnesses. Those who testify to that fact, and those who disprove it, however honest they may be, cannot both be correct, and you must, therefore, decide between them. In doing so, I think I can give you one unerring rule; wherever there is a contrariety of evidence, that statement cannot be believed, which leads to an impossible or an absurd conclusion. And I hope to satisfy you, that believing Mr. Goodwin struck Mr. Stoughton when on the ground, about the head, with the handle of the dagger, would necessarily lead to the absurd conclusion that Mr. Stoughton was not stabbed at all, and did not die of any wound; while believing that the blows were given only with the hand, leads to an easy and natural explanation of his calamitous death. So far, however, as relates to the acquittal of my client on this indictment, it seems to me, that in whatever shape this fact



is put before you, it equally leads to the conclusion that Mr. Stoughton's death was accidental, and not effected by the voluntary act of Mr. Goodwin. If these blows were given by the hand only, either open or clenched, they show that the dagger was then out of his hands, and give great probability, if not certainty, to the conclusion which I am sure you are inclined to draw, that the death was occasioned by that dagger, when it was out of the prisoner's hands. But, suppose those blows to have been given with the handle of the dagger; the witnesses who attempt to testify to that fact, agree that when they were given in the face the prisoner held the dagger (as he had done during the conflict, when standing up) by the blade, and struck with the handle. When then was the stab of the depth and direction described to you, given with the point? That he had the blade in his hand, both before and after the fall, all the witnesses agree who testify to that fact, except Vervalen, who probably saw nothing; for he deposed to things that could not possibly have happened, and in contradiction to every other witness. Indeed, I observed a smile on every countenance, and yours amongst the rest, when he related his extraordinary vision. But, putting him aside, and reasoning on the testimony of the witnesses who say my client struck with the handle of the dagger when Stoughton was on the ground, let me ask when was that wound given which penetrated through the ninth and tenth rib, forward and upward, through the heart to the breast-bone? If it were possible to conceive that fact to be established, it would put the acquittal of my client past all doubt, for it would place it upon the very extraordinary, but very solid ground of certainty, that Mr. Stoughton was not stabbed with that dagger.

Now, gentlemen, see how the evidence stands. The opposite counsel must either renounce that part of their own testimony, on which they seem mainly to rely, or abandon the conviction of my client; for they are met by an insuperable difficulty arising from that very testimony. The prisoner held the dagger by the blade, while standing face to face engaged in the conflict, and using it upon the head of the deceased. Beyond a doubt, it was not then the wound was given. I anticipate, indeed, that you will be urged to believe the deceased fell because he had been previously stabbed to the heart. This supposition, however, is not only entirely gratuitous, sufficient causes being otherwise assigned to the fall, but it is repelled by the constant employment of the prisoner's hands in fighting about the head of the deceased, by the impossibility of his inflicting the wound described, situated as the parties are proved to have been in respect to one another, by the position in which the prisoner held the dagger by about the middle of the blade; by the great notoriety and conspicuousness of movement which would have been necessary for changing the position of the dagger in the

hand, and of the arm itself, to give any thing approaching to such wound; and by the acknowledgment of all the witnesses that no one saw any such movement made. Besides, if the deceased had fallen, because his limbs and strength failed him in consequence of the stab, the fact would have been immediately obvious to the spectators. If the wound had produced its effect upon his system, and his muscular strength had been so entirely prostrated, he would not have risen and stood as if about to renew the combat till another syncope or fainting seized him. When the true cause that the consequences of his wound on his frame became obvious and caused the failure of his strength, he fainted, and never opened his eyes but for a moment with a glare of fury, and then closed them for ever. Returning then to my argument on the conclusions to be drawn from the contradictory statements of the witnesses, I repeat my assertion; beyond a doubt the wound was not given when both parties were engaged, face to face; in the conflict, before Mr. Stoughton's fall: and they continued in that attitude until he fell. When that event took place, Mr. Goodwin lost nearly his balance, and almost fell with him. If the witnesses are to be believed, who assert that while Mr. Stoughton lay on the ground, Mr. Goodwin was using the dagger, the same evidence states that he held it in the same position, and used it in the same way over the head of the deceased. Most assuredly also it was not then the wound was given. The deceased lay upon his back, rather than inclining to the left side. Where was the space (even if the prisoner's hands had not been otherwise employed) to permit the placing of the dagger under the deceased, the driving of it in that part of his body that most particularly rested on the ground, and withdrawing it again? The motion of the arm requisite for such an operation, must have been extremely conspicuous, and yet nobody saw it. Mr. Cambreleng saw his arm, and yet saw no thrust. If then I am correct that the wound could not have been given while the parties were standing engaged in conflict—nor yet while the deceased was lying on the ground, you are inevitably brought to the time—the only time when the wound could have been received: namely, as Mr. Stoughton was falling, or fell; and then it could not have been inflicted by the voluntary act of Mr. Goodwin.

The prisoner, though he did not entirely lose his balance, yet still was falling along with Mr. Stoughton. Now let any man show me, how the prisoner, holding the dagger by about the middle of the blade, always in front of the deceased, who was falling off from him backwards, and he himself staggering or falling forwards, could have inflicted a wound beginning near the back, splintering off part of one of the lower ribs, and penetrating ten inches forward and upwards, even to the breast bone, which it injured; and that without any of the spectators having seen the necessary change of the posi-



tion of the dagger in the prisoner's hand, or of his arm, to inflict the wound! Let any man, even standing firmly, place himself in that position, opposite another, and try with a weapon of that length, and held in that manner, to inflict such a wound, and he will immediately perceive it is impossible. But when it is further considered that both were falling, and of course, that the necessary physical force and firmness of position were wanting, it is, to say the least, incredible that the prisoner should not only have inflicted such a wound at that moment; but also have withdrawn the instrument again (the deceased being on his back on the ground), regripped it by the blade, and recommenced his blows about the head of the deceased, thus twice changing the position of the dagger in his hand, and the position and direction of his right arm; and all this unperceived by any of the surrounding witnesses.

I have said that under those circumstances, the necessary force and firmness of position for the voluntary inflicting of such a wound, were wanting. Evidence has been produced that muscular strength would be adequate to the giving of that wound—but it is idle to talk about the sufficiency of muscular strength in the abstract. It can only be applicable to this or any particular case, by taking into consideration the position of the parties and the situation of the part, the strength of which is to be exerted. In this case (if the wound be supposed to have been given by the dagger in the prisoner's hand), no momentum could have been given to the weapon, by imparting to it a velocity, before the point was made to touch the body. The shortness of the human arm, the length of the blade, and the position in which the dagger must have been held and driven, to inflict, by a person standing in front of his adversary, a wound beginning near the back, between the ninth and tenth ribs, and going upwards and forwards through the heart to the breastbone, show that if it could have been given at all, the point must have been applied to the back of the deceased without any antecedently acquired momentum or velocity, and forced through a part of one of the ribs, and into the body to the length of ten inches, by mere muscular exertion, commencing from a state of rest. The very skilful physician who examined the wound and dissected the body, influenced by these considerations, testified, that under all the circumstances of the case, he thought the muscular strength of a man would be inadequate to the giving of such a wound, and that it must have been caused by the fall, which alone could impart the force and velocity necessary for overcoming the difficulties. Other physicians, having no respect to the circumstances of the case, said they thought the strength of a man would be adequate to drive the dagger in so far, and to illustrate their opinion, you must have observed them drawing back their arms, and then thrusting the dagger forward, with the utmost velocity and force. I was stopped in the cross-examina-

tion of those witnesses, by which I wished to fix their minds on the situation of the parties, and the impossibility that the weapon could have been driven with that velocity and force; and, perhaps, I was rightly stopped; for I was told that it was your province to draw these conclusions. I ask you then to draw them now, and I entreat you to consider whether it can be supposed, or rather taken for granted, against evident presumption, against mercy, against the character and reputation of the prisoner, that he exerted a force, to which a very competent judge thinks, and I trust you will think, the muscular strength of any man would be under those circumstances, unequal.

I therefore say, and insist, gentlemen of the jury, that whichever set of witnesses you give credit to, you must arrive to the conclusion that my client must be acquitted. If his hands alone were employed about the head of the deceased, when he was on the ground, the dagger was then out of the prisoner's hands, and the natural conclusion is, that the wound was received by falling on it, or with it, on the ground. If you can believe it was still in his hands, and held thus by the blade through all the progress of the affair, Mr. Goodwin cannot be guilty of the crime charged in this indictment, for the death cannot have been occasioned by a stab with that dagger. Extraordinary and absurd as this certainly appears, yet it is a necessary conclusion, that the whole of the allegations about the mortal wound must be untrue, if this part of the testimony be taken as the truth.

But in this very singular case, more abundant in contradictions amongst honest men than I ever knew before, where witnesses speaking of the same thing differ so entirely one from the other, on what are you to rest? I might rely for my client, on the uncertainty of proof on behalf of the prosecution. I might tell you that where you were in doubt, you were bound to acquit.

There is, however, a surer and a safer guide for you, than the tongue of any witness. The senses of men may deceive them, their memories betray them, their feelings, passions, and apprehensions, may mislead them. But if there be any unerring fact, not to be altered by misapprehension or mistake, adopt that for your guide, and it will be a clue to lead you through the labyrinth. That fact exists, and though one rib may be mistaken for another, the wound itself, its situation, depth, direction, and nature, are certain. On them I have endeavored to fix your attention, and if you keep them steadily in view, they will give you as much certainty as the nature of this case can possibly admit.

That the cane was used in the conflict, there can be no doubt; the weight of the evidence, however, is, that the blow after which Mr. Stoughton fell was given with the fist. Mr. Clark clearly says so; Mr. McWilliams speaks as decidedly to the same fact, and says that when he was running up, before the knocking down, the battle was with their hands. Mr. Baker also says the same thing. There is therefore

much reason to doubt whether the prisoner had the dagger in his hand, even when Mr. Stoughton fell. But the allegation that Mr. Stoughton was struck with the handle of the dagger while lying on the ground is much more incredible, according to the evidence. It is only stated by Weir, Haycock, and McGowan. Mr. Ball, though he speaks of blows with the cane, does not confirm them. He only says that the prisoner struck Mr. Stoughton while falling, two or three blows with the cane, but not after he fell. Mr. Clark saw no such blows; Mr. Phelps did not see them; Mr. McWilliams says the prisoner was striking, or going to strike the deceased with his fists, and that he had no cane in his hand; Mr. Baker denies that the prisoner had the cane in his hand; so do Mr. Wilder and Mr. Cambreleng.

Further Mr. Wilder says his impression is, that he saw the dagger on the cartway immediately after Mr. Stoughton was raised, and on the spot where they were, and that he did not see it in Mr. Goodwin's hand. Mr. Weed says he saw the two pieces of the cane on the cartway; he however adds, that this was while Mr. Stoughton was down. On this latter point I doubt his accuracy as to the exact time; as I am also compelled to think him mistaken about the number of blows which he says were struck before Mr. Stoughton fell. Indeed the whole affair took place so rapidly that short spaces of time might easily be confounded, and the facts which are certain, show he must have erred in point of time. The dagger, to have been lying on the ground by the side of Mr. Stoughton while he was down, must have been drawn ten inches out of the wound and placed beside him. Mr. Stoughton's fall was on his back, and rather on the left, which was the wounded side, and he lay in that position: Mr. Goodwin's hands are said to have been active from the moment of the fall about the face of the deceased. The wound I have already shown, and I think it is certain, could not have been given in the conflict before the fall, but must have been received during or by the fall. How then could the hand of Mr. Goodwin have drawn the dagger out from the back of a man lying on his back, and on the wounded part, for such a length as ten inches, and not be observed, and his hands stated to have been constantly active about his adversary's face? Is it not more likely that Mr. Weed is mistaken as to a few seconds than that impossibilities have happened? He certainly is mistaken as to the number of blows which passed before Mr. Stoughton's fall. Although looking on from the very first, he saw but one blow given by Mr. Stoughton, and one by Mr. Goodwin, which knocked the former down. Every other witness present at that part of the transaction (for Mr. Clark was not) agrees that there were several blows given by each of the parties before Mr. Stoughton fell. In this respect as well as about the dagger, if Mr. Weed had not been disturbed and agitated he would not have been mistaken.

But he could not have seen the dagger lying by Mr. Stoughton on the ground, for in another part of his testimony, he said that when Mr. Stoughton fell, owing to the crowd, he could not see him, and he did not go off his stoop to help him up; he therefore could not have seen the dagger at that time. No doubt he saw the dagger on the ground, but it was at the time that Mr. Stoughton fainted, and was again near falling; and now to his mind's eye it appears as if he saw it when the deceased had fallen. He is only wrong in the appropriation of a small portion of time in a very rapid transaction; and if so, he was right in all the rest.

It appears from the testimony of some witnesses that the prisoner had the dagger in his hand after the affray; but none of them saw it there till after Mr. Stoughton fainted. Mr. Clark, who goes farther in this respect than any other, only said he saw it in Mr. Goodwin's hand while the deceased was fainting, and he yesterday said it was after Mr. Stoughton had fainted. As to a small portion of time or minute fact, his accuracy may also be questioned, for he is doubtless inaccurate in his account of the scuffle, and of Mr. Stoughton's striking after he was raised up. Surely then no witness who is incorrect in prominent transactions, can be implicitly relied on for small portions of time, of which he now speaks only from distant recollections. Neither Weir, Baker, Ball nor McWilliams saw the dagger in Mr. Goodwin's hand after the affray and before Mr. Stoughton had fainted. McWilliams was peculiarly well situated for seeing every thing, and is perhaps the most consistent and correct of all the witnesses in his whole story. McGowan cannot say whether the prisoner had the dagger in his hand when separated from Mr. Stoughton. Mr. Wilder denies it, and so does Mr. Cambreleng. The only explanation which can reconcile this testimony is, that the dagger was picked up and given to the prisoner; and Mr. Cambreleng says that his impression is that such was the fact. My client, a stranger, and knowing nobody who was there, either by name or person, except Mr. Cambreleng, and not having been himself observant of incidents, at the time apparently immaterial, cannot designate by whom this was done, nor produce him as a witness; but the probability of the fact, its tendency to reconcile apparently contradictory evidence, and the impression of Mr. Cambreleng, must be enough to induce a jury to believe that it took place.

I think the observations I have submitted to you, are sufficient to make you reject that statement, upon which there is so much contradictory testimony, that the prisoner had the dagger in his hand, and was using it about the head of the deceased, while he was lying on the ground. If that be not the fact, and that my client had before that parted with the dagger, let us see whether an explanation of the fatal accident does not naturally present itself. The prisoner was himself in danger of falling, and if he had retained the dagger in the posi-

tion in which he was holding it, he himself would have been the person to have fallen on it and to have received the wound. From a vague apprehension of this danger, or in the struggle to save himself from losing his balance, he parted with the weapon. While it was falling to the ground, the deceased was falling also: the point may have entangled in his outer coat, and the weight of the handle may have brought it to the position capable of giving to the wound the direction which has been sworn to, or Mr. Stoughton may have fallen on the dagger, as the handle reached and rested on the ground, before it could acquire an horizontal position; and afterwards, when Mr. Stoughton was raised up, the action and motion in rising, or the weight and shifting of his clothing, or accidental rubbing against some of those that were in contact with him, may have contributed, with the weight and bulk of the handle, and the slender and tapered form of the blade, to make it fall out, unobserved and unnoticed in the hurry of the transaction.

Our adversaries have no right to object against this explanation of the melancholy catastrophe, that it is unproved. The burthen of proof, as I have already stated, still rests on the prosecutors; and it is incumbent on them to show a state of facts, fixing with reasonable certainty, the infliction of the wound on a voluntary act of the prisoner; and irreconcilable with any suppositions of misadventure. It may be said that the casualties which I contend for are not likely to occur, and are in themselves extraordinary. To that I answer, that stronger objections lie against the supposition of a voluntary stabbing by the prisoner, for it is in itself nearly, if not entirely impossible. The range of chances is almost incalculable and infinite, and every one the least conversant with the accidents of life, knows that most extraordinary results in appearance, frequently happen fortuitously. There is scarcely a man who has not often seen things happen by accident, which he could not accomplish by any effort of dexterity or skill. And I do not hesitate to say, that an impartial reflector on this subject, will be much more inclined to believe that unexplained and perhaps unnoticed casualties, concurred to cause the infliction of the fatal wound, than that it was the result of a voluntary act of the prisoner, which could not but have engaged the attention of all the spectators, and which was observed by none of them.

It is true, that from the contradiction of the witnesses, nothing except the wound itself and its direction can be said to be proved with certainty; and the unfortunate man who stands accused before you, knows nothing of the fatal misfortune, nor could he without knowledge of what was to be proved, either instruct or guide us. I am therefore obliged to reason in the alternative, and to show that from no statement of the facts, can an impartial jury derive sufficient evidence of his guilt: and in making in-

ferences for or against the prisoner, justice and mercy should go hand in hand.

The conduct of the prisoner after the fact, shows he was not conscious of the fatality, and that it was entirely a misfortune. The surprise he manifested, when the unsheathed dagger was given to him: his deliberately remaining on the ground until Mr. Stoughton was carried into the neighboring store, and his only then retiring by the advice of Mr. Cambreleng: the open manner in which he kept the dagger in his hand, without disguise, after it had been given to him: all these things show that he had not knowingly given a wound. Had he been conscious of killing the deceased with that same dagger, would he not have thrown or given it away? Would he not have disappeared among the crowd, and flung it into some area as he passed? He did not believe that Stoughton was a dying man; but when he saw the situation in which Stoughton was carried into the store, and heard the expression of Mr. Phelps, it first occurred to his mind that some unfortunate accident had happened which he was unable to explain; and then for the first time he asks whether it would not be more prudent to pass over to Jersey for a time, than to remain exposed to the threatening hostility of the crowd.

He arrives safely in Jersey; would not conscious guilt, if he were guilty,—for conscience will make cowards of us all,—have counselled flight? On the contrary, he walks with company to the tavern, where he remains two or three hours, at liberty to dispose of himself as he may think best. He seeks no opportunity to escape; and when the officers of justice at length come over and intimate to him their purpose, though he was apprised they had no legal authority to touch him, and full well knew the spirit and angry jealousy of that State, against what they consider as the usurpations and encroachments of New York, though he had every reason to believe that an army would have turned out to oppose any person who would dare to take a prisoner from among them, and convey him back to this city, in violation of their State authority; yet he at once expressed his determination and readiness to accompany them. And notwithstanding the courage and address of Colonel Warner, if my client had raised that hue and cry, he would have excited a host that would have made a bloody catastrophe to the expedition of Colonel Warner and his officers.

But no: he resisted the opinion intimated by a man of the first legal information. He told Judge Butler, I know my rights, but I will make no resistance. I will not withdraw myself from the laws, nor from the jurisdiction of New York. In all this transaction, do you not find a steady calmness, and an absence of all self-reproach, which must powerfully weigh on his side in the scales of justice?

Gentlemen of the jury,—I am the last to address you on behalf of my client, and I must

now commit his worldly prospects, his character, his happiness, and fate on earth to the adverse observations of most able counsel, and to the deliberations of your judgments. At the time of life at which most of you have arrived, I cannot hope successfully to call on you as perhaps I might on younger men, and entreat you to commune with your own hearts, and to consider the failings and the frailties of youth. I scarcely dare say to you, that the indiscretions of a young man often result from the noblest elements of our nature; that God has given to him warm blood, a sanguine temperament, and ardent spirit, that nature will occasionally have its course, and that the workings of nature must be indulgently and mercifully viewed by all who are made by nature's God. I fear your opinions may be too severe for such an appeal, and that there is no point of contact between you and the unfortunate prisoner at the bar, by which I can hope to awaken your sympathies. But there surely is—some of you must be fathers. Has any one among you a son, noble, brave, and generous, whom you love with all a father's fondness, who is the delight and pride of his mother's heart, and lovely in the eyes of his sisters? Think on him. He may be involved by the hasty error of a moment, or by the precipitancy of another, in one of those terrible conflicts which the noblest and the bravest cannot always avoid. If you have such a son, my eloquent adversaries, who are to speak when I must be silent, may perhaps place him before your eyes, and make a parallel between his fate and that of Stoughton. If so, I must submit to it. But let me conjure you, that even the tender feelings they may excite, may not estrange your hearts from mercy. Remember, also, that if he should be engaged in such a deadly contest, he may not be so fortunate to close his eyes, and escape from the sorrows, the calamities, the miseries, and the agonies of life. He may be the wretched survivor; though guiltless of any evil intent, he may be doomed to nourish in his bosom a never-ending pang; you may hear him exclaim to you in the depth of grief, as that young man has to myself, "Would to God I were in Stoughton's place!" He may stand accused in that very box, surrounded by the fears and anxious wishes, but I trust in God

protected by the prayers of a doting and distracted mother, and of his agonized sisters. He may stand in that box, and you may occupy from day to day that seat of torturing suspense which the gallant brother of my client has now filled for so many days. A jury may be called to pass upon his actions, and to devote to ignominy, one intended by nature to be an ornament to the community in which he lives, and whose heart is guiltless of any criminal design. But by what rules would you wish that son to be judged? Would it be by those rules, if any such there be of human contrivance, which are reckless of the innocence of man's intention, which adjust offences by artificial reasonings, and constitute crimes from a guilt created by themselves; or by that rule which comes direct from God, and by which he administers justice in mercy to all his creatures? Would you not entreat that his fellow-men might deal with him as you trust the general Searcher of Hearts will deal with him on the final judgment of us all? So do you by my client. If his intentions were base and wicked, I do not seek to save him; but I entreat you, try him by his intentions, as that Judge will do who regards not technical distinctions, which are the offspring and proof of human weakness, whose All-seeing eye looks into the heart of man, and if that heart is guilty will condemn; but if innocent will acquit. I call upon you now, and I only ask you to act with the prisoner, as I hope the God of mercies will, when you and he shall stand before that awful presence, you to answer for your verdict, and he for his indiscretions. Let your judgments be tempered by a portion of the Almighty's loveliest and divinest attribute. The rule by which He will judge us as sinners, sheds a light of justice for your guidance, compared with which the learning of these books is darkness; and wherever they blindly depart from it, they are only filled with technical subtleties and metaphysical error. Like the God of wisdom and benevolence, attach crime to the intention, and to nothing else—absolve the innocent of heart; and when you return to the bar with your verdict, say to my client in the blessed words of the redeeming Son of that God—"Go, and sin no more!"

## GEORGE RICHARDS MINOT.

Judge Minot was one of the most prudent and moderate men of his age. He was descended from an English family, of which George Minot, one of the first settlers of Dorchester, Massachusetts, was a member. This George Minot, after serving thirty years as a ruling elder of the church in his adopted town, died during the winter of 1761, much lamented by those "whose weal he sought, and whose liberties he defended." His great-great grandson was the father of the present subject, and is described as a "gentleman of education, liberal principles, and exemplary character." He died in Boston on the fourteenth of January, 1787, in the seventy-sixth year of his age.

His celebrated son, the youngest of ten children, was born at Boston on the twenty-second of December, 1758. His childhood is spoken of as a continual exhibition of mildness and amiability. "That peculiar tenderness, with which the youngest child is treated in affectionate families, he was so happy as to experience; and the love which he received from all who surrounded him, early moulded his heart to that benevolence, which formed so conspicuous a part of his character during every period of his life."\*

Having passed through several preparatory schools, in which he won a high reputation for his studious habits, his rare rhetorical powers, and his unabated kindness for his fellow-students, he entered Harvard College at the age of sixteen. On receiving his first degree, which was accompanied with the highest honors of the college, he commenced the study of the law, with William Tudor, then an eminent lawyer and influential citizen of Boston. Here he enjoyed the companionship of Fisher Ames, who was a student in the same office. Here, says his eulogist, "his own genius caught fire from the flame, which burned so intensely in the imagination of his friend;" and he predicted the splendid reputation which this friend would in future acquire.†

In July, 1781, Mr. Minot took his second degree, and soon after was appointed the first clerk of the House of Representatives, under the new constitution of Massachusetts. In this station he became thoroughly acquainted with the causes which led to the celebrated Massachusetts insurrection, and after the termination of that affair, he prepared and published an elaborate history of it. This work, which was one of his first literary efforts, was compared with the *Catiline conspiracy* of Sallust, and was said to be without a rival in any previous provincial publication. In 1782 he delivered an oration commemorative of the Boston massacre.

When the Massachusetts Convention assembled in 1788, to consider upon the adoption of the Federal constitution, Mr. Minot was appointed the secretary. In January, 1792, he was placed on the bench of the probate court of the county of Suffolk, and in 1799 he was appointed chief justice of the court of common pleas. An incident connected with his judicial life has been preserved: "In the month of August, 1796," he says in his journal, "I was appointed to act as State's Attorney for the county of Suffolk, the Attorney General being absent upon the business of the boundary river, St. Croix. A number of disagreeable events, which I shall ever recollect with the greatest pain, concurred at this time to disqualify me for the task, which I felt

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\* Character of Judge Minot, in Massachusetts Historical Collections. Vol. 8, page 89.

† The same.

conscious of, but could not well decline it. A prepossession that one will do ill never fails to verify our fears; and accordingly I did ill enough, of which I had a due sense, and made suitable acknowledgments to my evil genius. Whilst I was in the paroxysm of my mortification, Mr. Sharpless, an ingenious portrait painter, sent me a note acquainting me, that he was making a collection of portraits of the most eminent and public characters in the United States, and requested to know when it would be convenient for me to sit to him. I really thought so meanly of myself, that I did not seem worthy to be hung up in a shoemaker's shop, under the last words and dying speech of Levi Ames, and nothing appeared to be wanting to my disgrace but suffering myself to be held up among the great worthies of America. Accordingly I sent my compliments to Mr. Sharpless, disclaiming all right of being ranked among the eminent and public characters, which he was collecting, and so refused sitting. The Chief Justice Dana afterwards called on me, and requested me to sit. Out of deference to him, I said, if it was his opinion that I ought, I would no longer decline. But, luckily, Mr. Sharpless never troubled me again with an invitation.”\*

In 1798, Judge Minot published a *Continuation of the History of the Province of Massachusetts Bay, from the year 1748*, the period where Hutchinson's history terminates; and at the time of his death, a second volume of this work was ready for publication. He was one of the original founders of the Massachusetts Historical Society, and from its first organization was an active and useful member. In the various benevolent institutions of his native State, he took a prominent part. His address before the charitable Fire Society, delivered in May, 1795, is a fair interpretation of his sentiments of benevolence, and the praise which his eulogists bestow on it, is alike worthy of it and himself.†

On the death of Washington, Judge Minot was selected to deliver a eulogy on that occasion before the inhabitants of Boston. He was then in ill health, and on that account declined to perform the task; but this availed him nothing. He was forced to accept. “They gave me ten days to prepare myself,” he says: “What were my feelings in this short time? My only refuge was in an enthusiastic pursuit of my subject, which stimulated what little powers I possessed to their utmost exertion. A candor and mild expectation prevailed through all ranks of people, which encouraged me. A like kind of attentive silence enabled me to deliver myself so as to be heard. I sat down unconscious of the effect, feeling as though the music was at once playing the dirge of Washington's memory, and my own literary reputation. I was soon astonished at my good fortune: all praised me: a whole edition of my eulogy sold in a day. \* \* \* My friends are delighted; and although nearly exhausted by sickness, I am happy. Such was the successful issue of the most unpropitious undertaking that I ever engaged in.” This was Judge Minot's last public effort. He died in the evening of the second day of January, 1802. Tributes of respect were offered to his memory, and the deepest regret prevailed in contemplation of the public loss.‡

#### EULOGY ON WASHINGTON.§

Our duty, my fellow-townsmen, on this distressing occasion, is dictated by the dignity and resplendent virtue of the beloved man whose death we deplore. We assemble to pay a debt to departed merit, a debt which we can only pay by the sincerity of our grief, and the respectful effusions of gratitude; for the highest eulogy left us to bestow upon our lamented Washington, is the strict narration of the truth;

and the loftiest character which we can assign to him, is the very display of himself. When ambition allies itself to guilt, when power

‡ See *An Address to the members of the Massachusetts Charitable Fire Society, at their annual meeting, May 28th, 1802: by John Quincy Adams: Sullivan's Family Letters: Boston Columbian Centinel, of January 6th, 1802* and Massachusetts Historical Collections, vol. 8, pp. 86-109.

§ An Eulogy on George Washington, late Commander-in-Chief of the armies of the United States of America, who died December 14th, 1799. Delivered before the inhabitants of the town of Boston, at the request of their committee, by George Richards Minot (on the 9th January, 1800)

\* Massachusetts Historical Collections. Vol. 8, page 108.

† See the Boston newspapers published soon after his decease.

tramples upon right, when victory triumphs in blood, when piety sits clouded in superstition, when humility is affected by cunning, when patriotism is founded on selfishness; then let adulation spread her prostituted mantle, to screen the disgraces of her patrons, and amuse with the falsehoods of her imagination. But to our political Father, the faithful page of history is panegyric, and the happiness of his country is the monument of his fame.

Come, then, warriors, statesmen, philosophers, citizens! assemble around the tomb of this favorite son of virtue; with all the luxury of sorrow recollect the important events of his life, and partake of the greatest legacy which a mortal could bequeath you, in the contemplation of his example. Whilst we solemnize this act, his disembodied spirit, if it be permitted to retrace the scenes of its terrestrial existence, will smile with approbation on the instructive rite.

Your anniversaries have long honored the eleventh of February, one thousand seven hundred and thirty-two, as the birthday of our illustrious chief; and the parish of his own name in Westmoreland County, in Virginia, boasts itself the place of his nativity. But to souls like his, local restrictions are not attached. Where Liberty was, there would be his country. Happy for us, the Genius of Liberty, responsive to his affections, resolved that where Washington was, there also should be her abode.

Educated by private instruction, his virtue grew with his knowledge; and the useful branches of literature occupied the whole powers of his mind. Exemplary for solidity of thought, and chastity of morals, he was honored by the government of Virginia with an important mission, at an age when the levities of the human character seldom yield to the earliest operation of reason.

At the opening of the great war of encroachments upon our western frontiers, he was the bearer of the remonstrance to the French. Such was the address, fidelity, and perseverance, with which he executed this important trust, that he was honored at twenty-two years of age, with the command of a regiment raised by his province. His military talents were soon called to the test. At Redstone victory perched upon his standard, but with that volatility by which she tries the powers of her favorite heroes, she in a few months afterwards left him, by his own exertions, to save the honors of war for his little band, in an unequal, but well supported battle. In Braddock's slaughtered army, he was a witness to scenes of horror, which his caution, had it been adopted, would have prevented, and which his steady courage assisted much to retrieve. During the remainder of this war, he was employed in fortifying his native province, in arranging and perfecting its militia, and in checking the incursions of the enemy, until the crisis of the contest had passed in this country, when he resigned his command.

Retirement to him was only a different mode

of action, and his repose partook not of indolence. Amidst the honorable pursuits of agriculture, he discharged various civil offices, until we find him rising amongst the patriots of our country, as a delegate from Virginia, in the first American Congress.

We shall ever remember the fifteenth day of June, one thousand seven hundred and seventy-five, when Providence directed to his appointment as the commander-in-chief of our revolutionary army. In this neighborhood he first drew his sword. Many of you, my fellow-townsmen, were then languishing under the fetters of tyranny, or were imprisoned within the joyless confines of your own habitations. Your hope was fixed on him. His command, independent of the resources of his own mind, afforded no ground for the support of your feelings. He had an army, brave indeed, but with little discipline; naked at the approach of winter; and almost subject to dissolution from temporary enlistments; a paymaster without money; a commissary struggling on the utmost stretch of credit. A veteran army lay under his eye strongly fortified, regularly paid, warmly clothed, and boasting its superiority to militia. Yet did his victorious sword relieve you, and save your city. Justly have you ascribed "your reinstatement to his wise arrangements, which compelled your invaders to adopt a less destructive policy than that which on other occasions they so wantonly practised." Could our gratitude forget it, the heights around us bear the triumphant evidence of his conquest.

To trace this protection of our liberties through his unrivalled career, from his gloomy retreat through the Jerseys to his several victories and his splendid triumph at Yorktown, would be to narrate the varying history of our revolution. To him, public labor was amusement, suffering in the cause of freedom was a luxury, and every hour as it flew carried an offering to his country.

As obedience to the voice of his oppressed fellow-citizens drew his sword on the approach of war, so at the declaration of peace, by the same respected voice he restored it to its scabbard. He left them his blessing and their liberties. O, Human Nature, how hast thou been traduced! With thee, has it been said, is essentially connected that lust of power which is insatiable; which restores not voluntarily what has been committed to its charge; which devours all rights, and resolves all laws into its own authority; which labors not for others, but seizes the fruits of their labors for itself; which breaks down all barriers of religion, society and nature that obstruct its course; now art thou vindicated! Here we behold thee allied to virtue, worn in the service of mankind, superior to the meanness of compensation, humbly hoping for the thanks of thy country alone, faithfully surrendering the sword, with which thou wast intrusted, and yielding up power with promptness and facility equalled

only by the diffidence and reluctance with which thou receivd'st it.

Now, will the future inquirer say, this Hero has finished the task assigned him, the measure of his glory is full. A world is admitted to freedom—a nation's boon. Favored beyond the leader of Israel, not only with the prospect, but with the fruition of the promised blessing, he has retired, like that prince of meekness, to the Mount, whence he is to ascend, unseen by a weeping people, to the reward of all his labors. No, he is to live another life upon this globe; he is to reap a double harvest in the field of perennial honor. The people whom he has saved from external tyranny, suffer from the agitations of their own unsettled powers. The tree of liberty which he has planted, and so carefully guarded from the storms, now flourishes beyond its strength, its lofty excrescences threaten to tear its less extended roots from the earth, and to prostrate it fruitless on the plain. But, he comes! In convention he presides over counsels, as in war he had led the battle. The constitution, like the rainbow after the flood, appears to us now just emerging from an overwhelming commotion; and we know the truth of the pledge from the sanction of his name.

The production was worthy of its authors, and of the magnanimous people whom it was intended to establish. You adopt it, you cherish it, and you resolve to transmit it, with the name of WASHINGTON, to the latest generation, who shall prove their just claim to such an illustrious descent.

Who was so worthy, as our great legislator, to direct the operations of a government which his counsels and his sword had labored to erect? By a unanimous suffrage he was invited to the exalted station of President of the United States. The call was too sacred to admit of doubt. It superseded the happiness of retirement, the demands of private interest, the sweet attractions of domestic society, and the hazard (forgive it, WASHINGTON! for thou wast mortal), the hazard of public reputation. Behold the man on this occasion so mighty in the eye of all the world, so humble in his own! He accepts the high appointment with such distrust of his natural endowments, with such diffidence in his capacity, as can be relieved only by his reliance on that Almighty Being, "who rules over the universe, who presides in the councils of nations, and whose providential aids can supply every human defect."

One of the earliest acts of his administration was that circular visit to transfuse his love, and receive the grateful benedictions of his loving countrymen, in which you, my fellow-townsmen, partook so liberal a share. What sensations rushed upon your minds, when you compared the dreadful aspect of your besieged city with its now smiling condition. The well-cultivated fields were screening from view the late terrific ramparts of the enemy, and the groans of the distressed had yielded to the busy noise of commerce and pleasure. How

grateful now is the recollection, that with tears of joy you crowded to meet him in your streets displaying the very insignia which you this day bear in mournful procession; and your children, bowing their heads with eager solicitude to attract his fatherly eye, received his pious blessing.

Did the occasion admit of it, how pleasing would be the review of his administration, as our supreme executive Magistrate! His talents and his virtues increased with his cares. His soul seemed not to bear the limits of office, a moment after the obligations of duty and patriotism withdrew their restraints from his universal love. When the misguided savages of the wilderness, after feeling his chastisement, had sued for peace, he seemed to labor for their happiness as the common representative of mankind. Insurrection was so struck at his countenance, that it fled from the shock of his arms. Intrigue attempted to entangle him in her poisonous web, but he burst it with gigantic strength, and crushed her labors. Anarchy looked out from her cavern, and was dashed into oblivion, as we trust, for ever. The nations of Europe saw the wisdom of our laws, the vigor of our measures, the justice of our policy, the firmness of our government, and acquiesced in the neutrality of our station.

The dangers of the Commonwealth having subsided at the close of his second administration, he felt himself justified, after dedicating forty-five years of his valuable life to her service, in withdrawing, to receive with resignation the great change of nature, which his age and his toils demonstrated to be near. When he declined your future suffrages, he left you a legacy. What! like Cesar's to the Romans, money for your sports? Like Attalus, a kingdom for your tyranny? No; he left you not such baubles, nor for such purposes. He left you the records of wisdom for your government; a mirror for the faithful representation to your own view, of yourselves, your weakness, your advantages, your dangers; a magnet which points to the secret mines and windings of party spirit, faction, foreign influence; a pillar to the unity of your republic; a band to inclose, conciliate and strengthen the whole of your wonderful and almost boundless communities. Read, preserve the sacred deposit; and, lest posterity should forget the truth of its maxims, engrave them on his tomb, that they may read them when they weep before it.

In his second resignation of power and the charms of office, the American leader appears superior to ancient or modern examples. Yet another grade was assigned to his virtue. Our national rights, so well defended at home, were invaded on the ocean. The alarm reaches his retreat; the honor of our Republic warms his heart; and he again accepts the sword for its defence from the hand of another, placed by the voice of the people in that supreme magistracy, which he alone had heretofore filled. With a less dignified soul, this official inferiority



might have availed to injure his country; but he who could descend from the head of a nation to discharge the minutest duties of a private citizen, was too great to allow the influence of etiquette to endanger the safety of the people. His condescension raises him above himself; his spirit fires all ranks of men; he is overwhelmed with the gratitude and applause of an enraptured nation.

Whilst we confide in his arm, and are marshalling our warriors to march under his banners, the God of armies, whose counsels are beyond the scrutiny of man, prepares for us the test of our submission to his chastising rod. It is decreed that our Washington shall die, but that his death shall be worthy of his life. He is to die by the hand of Virtue. The rapid disease which is selected as the instrument of his dissolution, instantaneously seizes him. His humanity delays the immediate aid to which alone it may yield. Inconsolable Domestic! what storms would you not have braved, what hazards would you not have encountered, to save that life which was sacrificed to your comfort and safety! At length Science flies to save him. Alas! what avails its skill against the mandate of Heaven? It comes too late!—It is finished.

Wonderful event! Greatness departs in glory, and envy is silent! All acknowledge him to be the first of citizens, and none feel hurt by his superiority. So impartial was he that none impeach his justice; so moderate, none complain of his power; so magnanimous, his conquered enemies applaud his humanity; so philanthropic, that neither color, nor climate, nor religion, nor politics could exclude the unfortunate from his succor. He had the habit of combining sentiment with action in such method and force, that he shed his benevolence on communities of men, with the same ease as the sudden impulse of momentary sensibility bestows it upon individuals. Unexampled virtue! allotted to its merited reward. Many founders of nations have been left to obtain from posterity that reputation which prejudice or bigotry has denied at their deaths. The tomb has been necessary to bury anger, petty interests and emulation, which barred our equitable judgment. But, in regard to this Sage, the gratitude of his country has been co-existent with his exertions. Time has not been required to remove him from our view, in order to magnify his exploits through the medium of fame; nor was it requisite that we should be deprived of the good he had done us, to entertain a just sense of its importance. Medals and statues have been decreed him when living, and your tears announce his greater triumph in your hearts, when dead. Disinterested love! What motives have you, freemen, for thus offering up your applause? He has now no shield to defend you from the invasions of your enemies; his head lies cold in the grave, and no counsel can arise from his lips. His eyes were closed by his own unshaken hand, and no smile

can now beam from his countenance to animate your troops. Grateful Republicans! indeed you weep not from selfishness. Afflicted with the thought of the blessings which he has showered upon yourselves and your children, you would call him, could your voice be heard, from the closed mansions of the dead, again to receive the tribute of your affection. You weep for her, whose tender participation in the anxieties of a husband relieved his cares, and protracted the invaluable life which love itself could no longer detain. Disconsolate woman! mourn not, for the faithful is gone to receive the reward of his uprightness. The whole desire of his heart, the whole pursuit of his labors has been the good of his fellow-men. Contrast him with those who have been raised by the empty, the criminal admiration of mankind, to the highest ranks in the Pantheon of fame. See one, instead of liberating and protecting, employed in conquering and enslaving a world, and weeping that his guilty task could be continued no longer. Another retiring from the purple, not with the united blessings of all religious sects, but the bigoted persecutor of the only rational—a divine religion. See the master of so many crowns, after yielding them up for a convent, instead of interesting himself in the welfare of mankind to the hour of his departure, relapsing into the absurdities of monkish superstition: and another, whose ashes are scarcely cold, slaughtering the armies of half the nations of Europe, to extend the limits of an Electorate, with as much zeal as our departed hero labored to extend the limits of freedom, civilization and morals. When so much worth steps off from the stage of life, the weakness of our nature is the only apology for our tears. Such an exit is not death; it is the triumph of the just.

Sons of freedom! as you regard the memory of your ascended Chief, attend to the injunction of his will. Remember that it was not for you alone he labored. It was for your posterity also; it was for the human race. For you and for them he was first in building the noblest political system that adorns the world. It is an experiment to ascertain the nature of man; whether he be capable of freedom, or whether he must be led by the reins of tyranny; whether he be endowed with that moderation and understanding which checks the extreme indulgence of his will; and by allowing to others the same rational enjoyment with himself, forms the liberty of the whole upon the partial restraint of each individual; or whether he must go on attempting to follow the dictates of selfishness, and find his only restraint in a power which will establish itself independent of his consent, and make him its slave. Who of us can be supposed to be so lost to himself, so forgetful of his children, and so traitorous to the world, as to contemplate the overthrow of this magnificent temple of wisdom? No, my fellow-townsmen, whatever zeal may suddenly suggest, or apprehensions tempt us to suspect,

there lives not a man among us so depraved, so cursed by Heaven. Shall it be said that the work of his hands, whom we this day almost adore; that the hope which he held out to the nations of the earth shall be frustrated by our divisions? To the honor of our country, not a man but answers—No: all, when rightly informed, wave their particular prejudices in support of the great pillar of our national Union. It is our pride; it was erected by our fathers; it is the standard of our defence. Let us, then, with a view of for ever maintaining it, banish all animosity, melt down all parties, wipe away all distinctions. Let us no longer designate men who have differed in sentiment, by odious epithets, mutually reflected and mutually disavowed; but if a common name be wanted, let it be formed from him whom we seek to honor, and let it be used to denote good will to one another, respect to our constitution, fortitude to our enemies, love to our country, devotion to our God.

In the condolence of this day, we cannot fail to notice the honor which we feel by the presence of the fathers of the State. It was not unbecoming the dignity of office, on such an occasion, to suspend its occupations and join the general sorrow. To devote this portion of time to his memory who devoted a long life to

our happiness, is rational and just. Within the present political year, you, honorable magistrates and legislators, in this place solemnized the obsequies of the late excellent Governor of our Commonwealth, the much-respected Sumner. Thus pass away the wise, the virtuous, and the faithful; by an irrevocable decree, less unwelcome to them, as it respects themselves, than grievous to us. Their lives are long enough for their own glory, but, alas! still too necessary to their country's welfare. The experience, the learning, the genius, the various coincidence of circumstances, which are necessary to form that effulgence of character, by which they enlighten, polish, and direct society, fall to the lot of few. When such lamps are extinguished, we are happy if our darkness be transient. But in your wisdom, the people of our Commonwealth safely confide; nor, as members of our united country, do they mourn like those who are without hope; for although in the present gloom of our political hemisphere, their late ruling planet has travelled to the morning of another clime, yet its kindred luminary rises on the horizon, brilliant, steady, and propitious to direct their course. They lament that their beloved WASHINGTON sleeps in death; their consolation is, that his faithful brother, the vigilant ADAMS, survives.

## HARRISON GRAY OTIS.

DESCENDED from an honorable and distinguished ancestry, this eloquent man was born in Boston, Massachusetts, on the eighth of October, 1765. He was the nephew of James Otis, the orator and patriot of the early revolutionary period, and the son of Samuel Allyne Otis, an eminent civilian, who, besides occupying many other positions of trust and honor, was chosen, after the adoption of the Federal Constitution, Secretary of the Senate of the United States. His mother was a daughter of Harrison Gray, the royal treasurer of Massachusetts, an adherent to the cause of the Crown during the Revolution, and one of those loyalists, whose estates were confiscated, and who left Boston, with the British troops, on their evacuation of that place in 1776.

Young Otis was educated at the public Latin school in his native town, and at Harvard University; graduating from the latter institution, at the age of eighteen, and receiving the honors of his class. From college he returned to Boston, and entered the office of John Lowell, as a student at law. All his energies were now directed to the acquisition of his chosen profession. Early and late he was at the office of his preceptor, poring over the books with the intensest application. In 1786 he commenced practice, and soon became distinguished. His first year was a successful one, and his reputation of ability continued to increase. About this time military matters attracted his attention. He became captain of a volunteer company, and was aide-de-camp to General Brooks, in the memorable insurrection in Massachusetts in the years 1786-1787.

In 1796 he was chosen to the legislature of his native State, the same year was elected to succeed Fisher Ames in the lower House of Congress, and there joined the opposition to the measures of Thomas Jefferson. From this time until the close of the war of 1812, he was constantly in public life, "the guide of popular opinion," says one of his ablest cotemporaries, "in all the trying scenes of commercial restrictions, embargo, and war." He was chosen speaker of the Massachusetts House of Representatives, in 1803. Two years after he was transferred to the presidency of the State Senate, and, on his retirement from that station in 1814, was appointed to the bench of the Court of Common Pleas.

Amidst the duties of his several official stations, he took an active and prominent part in all the great questions of the day; was "the orator of all public assemblies," and, "the first among his equals, was alike ready, at all times, with his pen and tongue." The earliest of his rhetorical efforts that are preserved, is the oration delivered at the request of the authorities of the town of Boston, on the anniversary of independence, 1788. Although this does not evince that strength and brilliancy, purity of diction, and depth of pathos, so characteristic of his latter productions, it indicates great power and a high order of talent. His *Eulogy on Hamilton*, which is considered as the most finished of his published orations, gained him unqualified applause. "We love him," says one, "for he has frequently turned aside from his labors, and, with reverence and homage, sacrificed at the tomb of the immortal Hamilton. No envy, which disturbs little minds, chafed his breast; but penetrated with grief, he shed upon Hamilton's grave

such tears as genius weeps at the loss of kindred souls." \* "During its delivery," says another, "all hung with breathless admiration on his words, and, at the end, in that stillness indicative alone of the deepest sorrow, they returned to their homes, with the only consolation that such men as Ames and Otis remained." †

Another occasion on which Mr. Otis displayed the loftiest strains of eloquence, was at the convention in New York in the month of September, 1812. The object of the convention was to determine upon the expediency of defeating the re-election of Mr. Madison, by running De Witt Clinton as the opposing candidate for the Presidency. It was composed of some of the ablest men of the country. After sitting two days, unable to come to any determination, on the third day they were about dissolving without any fixed plan of operation. Rufus King had pronounced the most impassioned invective against Clinton, and was so excited during his address, that his knees trembled under him. Gouverneur Morris doubted much the expediency of the measure, and was seconded in these doubts by Theodore Sedgewick, as well as by Judge Hopkinson. Many of the members were desirous of returning to Philadelphia by the steamboat, at two o'clock, P.M., of the third day. It was approaching the hour, and nothing had been determined, when Mr. Otis arose, apparently much embarrassed, holding his hat in his hand, and seeming as if he was almost sorry he had arisen. Soon he warmed with his subject, his hat fell from his hand, and he poured forth a strain of eloquence that chained all present to their seats, and when, at a late hour, the vote was taken, it was almost unanimously resolved to support Clinton. This effort was unprepared, but only proves how entirely Mr. Otis deserved the reputation he enjoyed of being a great orator.‡

Mr. Otis's connection with the convention which arose out of the internal difficulties produced by the war with Great Britain, and which met at Hartford in the winter of 1814, hardly requires notice here.§ After the legislatures of Massachusetts and Connecticut had received the report of the convention, the former deputized Mr. Otis, Mr. Thomas H. Perkins, and Mr. William Sullivan; the latter, Mr. Nathan Terry and Mr. Calvin Goddard, to repair to Washington city, "and make earnest and respectful application to the Government of the United States requesting their consent to some arrangement, whereby the State of Massachusetts, separately, or in concert with neighboring States, may be enabled to assume the defence of their territories against the enemy; and that to this end, a reasonable portion of the taxes collected within the said States, may be paid into the respective treasuries thereof, and appropriated to the payment of the balance due to the said States, and to the future defence of the same; the amount so paid into the treasuries to be credited, and the disbursements so made to be charged to the United States." The commissioners were further required to consult with, and to solicit the assistance and co-operation of the senators and representatives of this Commonwealth in the Congress of

\* Samuel L. Knapp, LL.D.

† George Cabot.

‡ This anecdote is recorded by John T. S. Sullivan in a note, at page 350 of his father's "Familiar Letters on Public Characters."

§ The Hartford Convention was composed of some of the ablest men of New England. George Cabot was its president. He was a native of Salem, Massachusetts, where he was born in 1752. Before he attained the age of twenty-six, he was a member of the Provincial Congress of Massachusetts, and distinguished himself in that body, by an opposition to the plan of establishing by law a maximum of prices, and by his strong advocacy for the freedom of commerce. In 1787-8 he was a prominent member of the Federal Convention of Massachusetts, and for many years a Senator in Congress. In 1798, he was appointed Secretary of the Navy, but declined to serve. During the latter portion of his life, he was sometimes in the State legislature and in the executive council. His death occurred at Boston, on the eighteenth of April, 1823.

Mr. Cabot was a self-taught man, and for the distinction he attained he was indebted to his own cultivation of the extraordinary powers of his mind. In conversation, he was unusually eloquent. Dr. Kirkland, one who had the best opportunities to know him, thus describes his qualities. "His mind was at once comprehensive and discriminating; full, yet accurate. He was sagacious and acute in disentangling involved and difficult subjects; knowing how to separate appearances from realities; to distinguish the probable, the true, the practical. The materials that constituted his intellectual store, lay in his mind in methodical arrangement, ready to be applied to their proper uses, for argument, persuasion, colloquial communication, or the conduct of life." In personal appearance, he is described as a tall man, of courteous and elegant manners, and refined aspect; his complexion was light, his eyes blue.

He was a decided federalist; and the friend of Gore, Ames and Hamilton. He also enjoyed the confidence of Washington. His course in the convention at Hartford, is fully explained in Dwight's history of that body. See *Sullivan's Familiar Letters*.

the United States. The commissioners arrived at Washington about the middle of February, 1815, at which time the news of the conclusion of the treaty of Ghent was received by the government. This rendered the object of their mission futile, and they returned to their homes. Mr. Otis published a defence of the convention in a series of eloquent and spirited letters, in 1824.

In 1817 Mr. Otis was elected to the United States Senate, where he remained until 1828, discharging with great ability and high patriotism, the most important functions, and always devoted to the interests of his State and country. In the celebrated discussion which arose in the Senate, at the time the Missouri question was before that body, he displayed the greatest power and eloquence. His speech on that occasion is among the few preserved of that extraordinary debate. On leaving Congress, he returned to Boston, and became a candidate for governor of Massachusetts, in opposition to William Eustis, but was defeated in the election. In 1829 he was elected mayor of Boston. This was the last public station he occupied. At the close of his mayoralty, he retired to private life; and on the twenty-eighth of October, 1848, retaining his mental vigor to the last, he died, in the eighty-fourth year of his age.

A short time previous to his death, he addressed a spirited and effective letter to the public, advocating the support of General Taylor for the presidency. This was published on the second of October, and was probably the latest work of his pen.

No formal biography of Mr. Otis has yet appeared. The most extended account of his life and services is given by Mr. Loring, in *The Hundred Boston Orators*; but the greater part of his history is to be found in the occasional productions of his time, and the few manuscript letters of his cotemporaries

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#### EULOGY ON HAMILTON.

Mr. Otis pronounced this eulogy, at the request of the citizens of Boston, on the twenty-sixth of July, 1804:

We are convened, afflicted fellow-citizens, to perform the only duties which our republics acknowledge or fulfil to their illustrious dead; to present to departed excellence an oblation of gratitude and respect: to inscribe its virtues on the urn which contains its ashes, and to consecrate its example by the tears and sympathy of an affectionate people.

Must we, then, realize that Hamilton is no more! Must the sod, not yet cemented on the tomb of Washington, still moist with our tears, be so soon disturbed to admit the beloved companion of Washington, the partner of his dangers, the object of his confidence, the disciple who leaned upon his bosom! Insatiable Death! Will not the heroes and statesmen, whom mad ambition has sent from the crimsoned fields of Europe, suffice to people thy dreary dominions! Thy dismal avenues have been thronged with princely martyrs and illustrious victims. Crowns and sceptres, the spoils of royalty, are among thy recent trophies, and the blood of innocence and valor has flowed in torrents at thy inexorable command. Such have been thy ravages in the old world. And in our infant country how small was the remnant of our revolutionary

heroes which had been spared from thy fatal grasp! Could not our Warren, our Montgomery, our Mercer, our Greene, our Washington appease thy vengeance for a few short years! Shall none of our early patriots be permitted to behold the perfection of their own work in the stability of our government and the maturity of our institutions! Or hast thou predetermined, dread King of Terrors! to blast the world's best hope, and by depriving us of all the conductors of our glorious revolution, compel us to bury our liberties in their tombs! O Hamilton! great would be the relief of my mind, were I permitted to exchange the arduous duty of attempting to portray the varied excellence of thy character, for the privilege of venting the deep and unavailing sorrow which swells my bosom, at the remembrance of the gentleness of thy nature, of thy splendid talents and placid virtues! But, my respected friends, an indulgence of these feelings would be inconsistent with that deliberate recital of the services and qualities of this great man, which is required by impartial justice and your expectations.

In governments which recognize the distinctions of splendid birth and titles, the details of illustrious lineage and connections become interesting to those who are accustomed to value those advantages. But in the man whose loss we deplore, the interval between manhood and death was so uniformly filled by a display of

the energies of his mighty mind, that the world has scarcely paused to inquire into the story of his infant or puerile years. He was a planet, the dawn of which was not perceived; which rose with full splendor, and emitted a constant stream of glorious light until the hour of its sudden and portentous eclipse.

At the age of eighteen, while cultivating his mind at Columbia College, he was roused from the leisure and delights of scientific groves by the din of war. He entered the American army as an officer of artillery, and at that early period familiarized himself to wield both his sword and his pen in the service of his country. He developed at once the qualities which command precedence, and the modesty which conceals its pretensions. Frank, affable, intelligent and brave, young Hamilton became the favorite of his fellow-soldiers. His intuitive perception and correct judgment rendered him a rapid proficient in military science, and his merit silenced the envy which it excited.

A most honorable distinction now awaited him. He attracted the attention of the commander-in-chief, who appointed him an aid, and honored him with his confidence and friendship. This domestic relation afforded to both frequent means of comparing their opinions upon the policy and destinies of our country, upon the sources of its future prosperity and grandeur, upon the imperfection of its existing establishments; and to digest those principles, which, in happier times, might be interwoven into a more perfect model of government. Hence, probably, originated that filial veneration for Washington and adherence to his maxims, which were ever conspicuous in the deportment of Hamilton; and hence the exalted esteem and predilection uniformly displayed by the magnanimous patron to the faithful and affectionate pupil.

While the disasters of the American army, and the perseverance of the British ministry, presented the gloomy prospect of protracted warfare, young Hamilton appeared to be content in his station, and with the opportunities which he had of fighting by the side, and executing the orders of his beloved chief. But the investment of the army of Cornwallis suddenly changed the aspect of affairs, and rendered it probable that this campaign, if successful, would be the most brilliant and decisive of any that was likely to occur. It now appeared that his heart had long panted for an occasion to signalize his intrepidity and devotion to the service of his country. He obtained, by earnest entreaties, the command of a detachment destined to storm the works of Yorktown. It is well known with what undaunted courage he pressed on to the assault, with unloaded arms, presented his bosom to the dangers of the bayonet, carried the fort, and thus eminently contributed to decide the fate of the battle and of his country. But even here the impetuosity of the youthful conqueror was restrained by the clemency of the benevolent man: the butchery of

the American garrison, at New London, would have justified and seemed to demand an exercise of the rigors of retaliation. This was strongly intimated to Colonel Hamilton, but we find, in his report to his commanding officer, in his own words, that, "incapable of imitating examples of barbarity, and forgetting recent provocations, he spared every man who ceased to resist."

Having, soon afterwards, terminated his military career, he returned to New York, and qualified himself to commence practice as a counsellor at law. But the duties and emoluments of his profession were not then permitted to stifle his solicitude to give a correct tone to public opinion, by the propagation of principles worthy of adoption by a people who had just undertaken to govern themselves. He found the minds of men chafed and irritated by the recollection of their recent sufferings and dangers. The city of New York, so long a garrison, presented scenes and incidents, which naturally aggravated these dispositions, and too many were inclined to fan the flame of discord, and mar the enjoyment and advantages of peace, by fomenting the animosities engendered by the collisions of war. To soothe these angry passions; to heal these wounds; to demonstrate the folly and inexpediency of scattering the bitter tares of national prejudice and private rancor among the seeds of public prosperity, were objects worthy of the heart and head of Hamilton. To these he applied himself, and by a luminous pamphlet, assuaged the public resentment against those whose sentiments had led them to oppose the Revolution; and thus preserved from exile many valuable citizens, who have supported the laws and increased the opulence of their native State.

From this period he appears to have devoted himself principally to professional occupations, which were multiplied by his increasing celebrity, until he became a member of the convention, which met at Annapolis, merely for the purpose of devising a mode of levying and collecting a general impost. Although the object of this convention was thus limited, yet so manifold, in his view, were the defects of the old confederation, that a reform, in one particular, would be ineffectual: he, therefore, first suggested the proposal of attempting a radical change in its principles; and the address to the people of the United States, recommending a general convention, with more extensive powers, which was adopted by that assembly, was the work of his pen.\*

To the second convention, which framed the constitution, he was also deputed as a delegate from the State of New York.

In that assemblage of the brightest jewels of America, the genius of Hamilton sparkled with pre-eminent lustre. The best of our orators

\* This information is derived from a respectable member of that convention, from the State of New York.—*Author of the Eulogy.*

were improved by the example of his eloquence. The most experienced of our statesmen were instructed by the solidity of his sentiments, and all were convinced of the utility and extent of his agency in framing the constitution.

When the instrument was presented to the people for their ratification, the obstacles incident to every attempt to combine the interests, views and opinions of the various States, threatened, in some of them, to frustrate the hopes and exertions of its friends. The fears of the timid, the jealousies of the ignorant, the arts of the designing, and the sincere conviction of the superficial, were arrayed into a formidable alliance, in opposition to the system. But the magic pen of Hamilton dissolved this league. Animated by the magnitude of his object, he enriched the daily papers with the researches of a mind teeming with political information. In these rapid essays, written amid the avocations of business, and under the pressure of the occasion, it would be natural to expect, that much would require revision and correction. But in the mind of Hamilton nothing was superficial but resentment of injuries; nothing fugitive, but those transient emotions which sometimes lead virtue astray. These productions of his pen are now considered as a standard commentary upon the nature of our government; and he lived to hear them quoted by his friends and adversaries, as high authority, in the tribunals of justice, and in the legislature of the nation.

When the constitution was adopted, and Washington was called to the presidency by his grateful country, our departed friend was appointed to the charge of the treasury department, and of consequence became a confidential member of the administration. In this new sphere of action, he displayed a ductility and extent of genius, a fertility in expedients, a faculty of arrangement, an industry in application to business, and a promptitude in despatch; but beyond all, a purity of public virtue and disinterestedness, which are too mighty for the grasp of my feeble powers of description. Indeed, the public character of Hamilton, and his measures from this period, are so intimately connected with the history of our country, that it is impossible to do justice to one without devoting a volume to the other. The Treasury of the United States, at the time of his entrance upon the duties of his office, was literally a creature of the imagination, and existed only in name, unless folios of unsettled balances, and bundles of reproachful claims were deserving the name of a treasury. Money there was none; and of public credit scarcely a shadow remained. No national system for raising and collecting a revenue had been attempted, and no estimate could be formed, from the experiments of the different States, of the probable result of any project of deriving it from commerce. The national debt was not only unpaid, but its amount was a subject of uncertainty and conjecture. Such was the chaos from which

the Secretary was called upon to elicit the elements of a regular system, adequate to the immediate exigencies of a new and expensive establishment, and to an honorable provision for the public debt. His arduous duty was not to reform abuses, but to create resources; not to improve upon precedent, but to invent a model. In an ocean of experiment, he had neither chart nor compass but those of his own invention. Yet such was the comprehensive vigor of his mind, that his original projects possessed the hardihood of settled regulations. His sketches were little short of the perfection of finished pictures. In the first session of Congress, he produced a plan for the organization of the Treasury Department, and for the collection of a national revenue; and in the second, a report of a system for funding the national debt. Great objections were urged against the expediency of the principles, assumed by him for the basis of his system; but no doubt remained of their effect. A dormant capital was revived, and with it commerce and agriculture awoke as from the sleep of death. By the enchantment of this "mighty magician," the beautiful fabric of public credit rose in full majesty upon the ruins of the old confederation; and men gazed with astonishment upon a youthful prodigy, who, at the age of thirty-three, having already been the ornament of the camp, the forum and the Senate, was now suddenly transformed into an accomplished financier, and a self-taught adept, not only in the general principles, but the intricate details, of his new department.

It is not wonderful that such resplendent powers of doing right should have exposed him to the suspicion of doing wrong. He was suspected and accused. His political adversaries were his judges. Their investigation of his conduct and honorable acquittal added new lustre to his fame, and confirmed the national sentiment, that in his public character he was indeed "a man without fear and without reproach."

To his exertions in this department, we are indebted for many important institutions. Among others, the plan of redeeming the public debt, and of a national bank to facilitate the operations of government, were matured and adopted under his auspices; and so complete were his arrangements, that his successors, though men of undoubted talents, and one of them a political opponent, have found nothing susceptible of material improvement.

But the obligations of his country, during this period, were not confined to his merit as a financier.

The flame of insurrection was kindled in the western counties of Pennsylvania, and raged with such violence, that large detachments of military force were marched to the scene of the disturbance, and the presence of the great Washington was judged necessary to quell the increasing spirit of revolt. He ordered the Secretary to quit the duties of his department, and attend him on the expedition. His versa-

tile powers were immediately and efficaciously applied to restore the authority of the laws. The principal burden of the important civil and military arrangements, requisite for this purpose, devolved upon his shoulders. It was owing to his humanity, that the leaders of this rebellion escaped exemplary punishment: and the successful issue was, in public and unqualified terms, ascribed to him by those, whose political relations would not have prompted them to pay the homage of unmerited praise.

He was highly instrumental in preserving our peace and neutrality, and saving us from the ruin which has befallen the republics of the old world. Upon this topic, I am desirous of avoiding every intimation which might prove offensive to individuals of any party. God forbid that the sacred sorrow, in which we all unite, should be disturbed by the mixture of any unkindly emotions! I would merely do justice to this honored shade, without arraigning the motives of those who disapproved and opposed his measures.

The dangers, which menaced our infant government at the commencement of the French revolution, are no longer a subject of controversy. The principles, professed by the first leaders of that revolution, were so congenial to those of the American people; their pretences of aiming merely at the reformation of abuses were so plausible; the spectacle of a great people struggling to recover their "long lost liberties" was so imposing and august; while that of a combination of tyrants to conquer and subjugate, was so revolting; the services, received from one of the belligerent powers, and the injuries inflicted by the other, were so recent in our minds, that the sensibility of the nation was excited to the most exquisite pitch. To this disposition, so favorable to the wishes of France, every appeal was made, which intrigue, corruption, flattery and threats could dictate. At this dangerous and dazzling crisis, there were but few men entirely exempt from the general delirium. Among that few was Hamilton. His penetrating eye discerned, and his prophetic voice foretold, the tendency and consequence of the first revolutionary movements. He was assured, that every people which should espouse the cause of France would pass under her yoke, and that the people of France, like every nation which surrenders its reason to the mercy of demagogues, would be driven by the storms of anarchy upon the shores of despotism. All this he knew was conformable to the invariable law of nature and experience of mankind. From the reach of this desolation he was anxious to save his country, and in the pursuit of his purpose, he breast-ed the assaults of calumny and prejudice. "The torrent roared, and he did buffet it." Appreciating the advantages of a neutral position, he co-operated with Washington, Adams, and the other patriots of that day, in the means best adapted to maintain it. The rights and duties of neutrality, proclaimed by the President, were

explained and enforced by Hamilton in the character of *Pacificus*. The attempts to corrupt and intimidate were resisted. The British treaty was justified and defended as an honorable compact with our natural friends, and pregnant with advantages, which have since been realized and acknowledged by its opponents.

By this pacific and vigorous policy, in the whole course of which the genius and activity of Hamilton were conspicuous, time and information were afforded to the American nation, and correct views were acquired of our situation and interests. We beheld the republics of Europe march in procession to the funeral of their own liberties, by the lurid light of the revolutionary torch. The tumult of the passions subsided, the wisdom of the administration was perceived, and America now remains a solitary monument in the desolated plains of liberty.

Having remained at the head of the treasury several years, and filled its coffers; having developed the sources of an ample revenue, and tested the advantages of his own system by his own experience; and having expended his private fortune; he found it necessary to retire from public employment, and to devote his attention to the claims of a large and dear family. What brighter instance of disinterested honor has ever been exhibited to an admiring world! That a man, upon whom devolved the task of originating a system of revenue for a nation; of devising the checks in his own department; of providing for the collection of sums, the amount of which was conjectural; that a man, who anticipated the effects of a funding system, yet a secret in his own bosom, and who was thus enabled to have secured a princely fortune, consistently with principles esteemed fair by the world; that such a man, by no means addicted to an expensive or extravagant style of living, should have retired from office destitute of means adequate to the wants of mediocrity, and have resorted to professional labor for the means of decent support, are facts which must instruct and astonish those, who, in countries habituated to corruption and venality, are more attentive to the gains than to the duties of official station. Yet Hamilton was that man. It was a fact, always known to his friends, and it is now evident from his testament, made under a deep presentiment of his approaching fate. Blush, then, ministers and warriors of imperial France, who have deluded your nation by pretensions to a disinterested regard for its liberties and rights. Disgorge the riches extorted from your fellow-citizens, and the spoils amassed from confiscation and blood! Restore to impoverished nations the price paid by them for the privilege of slavery, and now appropriated to the refinements of luxury and corruption! Approach the tomb of Hamilton, and compare the insignificance of your gorgeous palaces with the awful majesty of this tenement of clay!

We again accompany our friend in the walks of private life, and in the assiduous pursuit of



his profession, until the aggressions of France compelled the nation to assume the attitude of defence. He was now invited by the great and enlightened statesman, who had succeeded to the presidency, and at the express request of the commander-in-chief, to accept of the second rank in the army. Though no man had manifested a greater desire to avoid war, yet it is freely confessed, that when war appeared to be inevitable, his heart exulted in "the tented field," and he loved the life and occupation of a soldier. His early habits were formed amid the fascinations of the camp. And though the pacific policy of Adams once more rescued us from war, and shortened the existence of the army establishment, yet its duration was sufficient to secure to him the love and confidence of officers and men, to enable him to display the talents and qualities of a great general, and to justify the most favorable prognostics of his prowess in the field.

Once more this excellent man unloosed the helmet from his brow, and returned to the duties of the forum. From this time he persisted in a firm resolution to decline all civil honors and promotion, and to live a private citizen, unless again summoned to the defence of his country. He became more than ever assiduous in his practice at the bar, and intent upon his plans of domestic happiness, until a nice and mistaken estimate of the claims of honor, impelled him to the fatal act which terminated his life.

While it is far from my intention to draw a veil over this last great error, or in the least measure to justify a practice, which threatens in its progress to destroy the liberty of speech and of opinion; it is but justice to the deceased to state the circumstances which should palliate the resentment that may be excited in some good minds towards his memory. From the last sad memorial which we possess from his hand, and in which, if our tears permit, we may trace the sad presage of the impending catastrophe, it appears that his religious principles were at variance with the practice of duelling, and that he could not reconcile his benevolent heart to shed the blood of an adversary in private combat, even in his own defence. It was, then, from public motives, that he committed this great mistake. It was for the benefit of his country, that he erroneously conceived himself obliged to make the painful sacrifice of his principles, and to expose his life. The sober judgment of the man, was confounded and misdirected by the jealous honor of the soldier; and he evidently adverted to the possibility of events that might render indispensable, the esteem and confidence of soldiers as well as of citizens.

But while religion mourns for this aberration of the judgment of a great man, she derives some consolation from his testimony in her favor. If she rejects the apology, she admits the repentance; and if the good example be not an atonement, it may be an antidote for the bad.

Let us, then, in an age of infidelity, join, in imagination, the desolate group of wife and children and friends, who surround the dying bed of the inquisitive, the luminous, the scientific Hamilton, and witness his attestation to the truth and comforts of our holy religion. Let us behold the lofty warrior bow his head before the cross of the meek and lowly Jesus; and he who had so lately graced the sumptuous tables and society of the luxurious and rich, now regardless of these meaner pleasures, and aspiring to be admitted to a sublime enjoyment with which no worldly joys can compare; to a devout and humble participation of the bread of life. The religious fervor of his last moments was not an impulse of decaying nature yielding to its fears, but the result of a firm conviction of the truths of the gospel. I am well informed, that in early life, the evidences of the Christian religion had attracted his serious examination, and obtained his deliberate assent to their truth, and that he daily, upon his knees, devoted a portion of time to a compliance with one of its most important injunctions: and that, however these edifying propensities might have yielded occasionally to the business and temptations of life, they always resumed their influence, and would probably have prompted him to a public profession of his faith in his Redeemer.

Such was the untimely fate of Alexander Hamilton, whose character warrants the apprehension, that "take him for all in all, we ne'er shall look upon his like again."

Nature, even in the partial distribution of her favors, generally limits the attainments of great men within distinct and particular spheres or eminence. But he was the darling of nature, and privileged beyond the rest of her favorites. His mind caught at a glance that perfect comprehension of a subject for which others are indebted to a patient labor and investigation. In whatever department he was called to act, he discovered an intuitive knowledge of its duties, which gave him an immediate ascendancy over those who had made them the study of their lives; so that, after running through the circle of office, as a soldier, statesman and financier, no question remained for which he had been qualified, but only in which he had evinced the most superlative merit. He did not dissemble his attachment to a military life, nor his consciousness of possessing talents for command; yet no man more strenuously advocated the rights of the civil over the military power, nor more cheerfully abdicated command and returned to the rank of the citizen, when his country could dispense with the necessity of an army.

In his private profession, at a bar abounding with men of learning and experience, he was without a rival. He arranged, with the happiest facility, the materials collected in the vast storehouse of his memory, surveyed his subject under all its aspects, and enforced his arguments with such powers of reasoning, that nothing was wanting to produce conviction, and gener-

ally to ensure success. His eloquence combined the nervousness and copious elegance of the Greek and Roman schools, and gave him the choice of his clients and his business. These wonderful powers were accompanied by a natural politeness and winning condescension, which forestalled the envy of his brethren. Their hearts were gained before their pride was alarmed; and they united in their approbation of a pre-eminence, which reflected honor on their fraternity.

From such talents, adorned by incorruptible honesty and boundless generosity, an immense personal influence over his political and private friends was inseparable; and by those who did not know him, and who saw the use to which ambition might apply it, he was sometimes suspected of views unpropitious to the nature of our government. The charge was inconsistent with the exertions he had made, to render that government in its present form, worthy of the attachment and support of the people, and his voluntary relinquishment of the means of ambition, the purse-strings of the nation. He was, indeed, ambitious, but not of power; he was ambitious only to convince the world of the spotless integrity of his administration and character. This was the key to the finest sensibilities of the heart. He shrunk from the imputation of misconduct in public life; and if his judgment ever misled him, it was only when warped by an excessive eagerness to vindicate himself at the expense of his discretion. To calumny, in every other shape, he opposed the defence of dignified silence and contempt.

Had such a character been exempt from foibles and frailties, it would not have been human. Yet so small was the catalogue of these, that they would have escaped observation, but for the unparalleled frankness of his nature, which prompted him to confess them to the world. He did not consider greatness as an authority for habitual vice; and he repented with such contrition of casual error, that none remained offended but those who never had a right to complain. The virtues of his private and domestic character comprised whatever conciliates affection and begets respect. To envy he was a stranger, and of merit and talents the unaffected eulogist and admirer. The charms of his conversation, the brilliance of his wit, his regard to decorum, his ineffable good humor, which led him down from the highest range of intellect to the level of colloquial pleasantry, will never be forgotten, perhaps never equalled.

To observe that such a man was dear to his family would be superfluous. To describe how dear, impossible. Of this we might obtain some adequate conception, could we look into the retreat which we had chosen for the solace of his future years; which, enlivened by his presence, was so lately the mansion of cheerfulness and content; but now, alas! of lamentation and wo!—

"For him no more the blazing hearth shall burn,  
Or tender consort wait with anxious care;  
No children run to lisp their sire's return,  
Or climb his knees, the envied kiss to share."

With his eye upon the eternal world, this dying hero had been careful to prepare a testament, almost for the sole purpose of bequeathing to his orphans the rich legacy of his principles; and having exhibited in his last hours to this little band the manner in which a Christian should die, he drops, in his flight to heaven, a summary of the principles by which a man of honor should live.

The universal sorrow manifested in every part of the Union, upon the melancholy exit of this great man, is an unequivocal testimonial of the public opinion of his worth. The place of his residence is overspread with a gloom which bespeaks the presence of a public calamity, and the prejudices of party are absorbed in the overflowing tide of national grief.

It is, indeed, a subject of consolation, that diversity of political opinions has not yet extinguished the sentiment of public gratitude. There is yet a hope that events like these, which bring home to our bosoms the sensation of a common loss, may yet remind us of our common interest, and of the times, when, with one accord, we joined in the homage of respect to our living as well as to our deceased worthies.

Should those days once more return, when the people of America, united as they once were united, shall make merit the measure of their approbation and confidence, we may hope for a constant succession of patriots and heroes. But should our country be rent by factions, and the merit of the man be estimated by the zeal of the partisan, irreparable will be the loss of those few men, who, having once been esteemed by all, might again have acquired the confidence of all, and saved their country, in an hour of peril, by their talents and virtues.—

"So stream the sorrows that embalm the brave;  
The tears which virtue sheds on glory's grave."

## DE WITT CLINTON.

THIS energetic statesman and political economist was born in the Province of New York, on the second day of March, 1769. He was educated for the bar, under the tuition of Samuel Jones, but, before he had made any considerable progress in practice, was appointed private secretary to Governor George Clinton, his uncle. From this time he became identified with the politics of the State, mingled in the discussions of the day, and soon distinguished himself by the power and pungency of his occasional writings. In the protracted controversy that arose during the period prior to and at the time of the adoption of the Federal Constitution, Mr. Clinton took a prominent part. He opposed the arguments of Jay, Hamilton, and Madison, in a series of papers, over the signature of *A Countryman*, which, although failing to answer the triumphant exposition of *The Federalist*, "carried conviction to a large proportion of the voters of the State of New York." During the session of the Federal Convention of his native State, he was present and reported the debates. "His letters at this time," says Professor Renwick, "show him to have been in principle an anti-federalist. Mature reflection in after days changed his views on this subject; and his official letter to the mayor of Philadelphia, on the occasion of the death of Hamilton, shows how completely satisfied he had then become of the wisdom which directed the framers of the constitution.\*"

Mr. Clinton also opposed the treaty of Mr. Jay, and the foreign policy of the General Government. In 1794 he turned his attention to military affairs, was elected lieutenant, and subsequently captain of a company of volunteers, that had been formed anticipating an open rupture with England or France, both of which nations were committing constant depredations upon American commerce. About the same time he occupied the post of secretary to the Regents of the University, and also to the harbor commissioners.

The election of John Jay to the governorship of New York, in 1795, deprived Mr. Clinton of his several official stations, and he immediately returned to the profession of the law, but for a short period only. In 1797 he was a member of the legislature, and the following year took his seat in the State Senate. Here he occupied a leading place, originated and perfected many important measures, and displayed the most comprehensive views of governmental policy. He supported President Adams in the defence of the honor of the nation against the aggressions of France, lent a helping hand towards the abolition of slavery, and in other great questions exhibited extraordinary diplomatic skill and legal force.

In 1801 he entered the Senate of the United States, where he met in debate, and as an opponent, the powerful orator and statesman, Gouverneur Morris. The most important question that came before the Senate during his career, was that of the navigation of the Mississippi. The debate was a violent and protracted one, in which he and Mr. Morris took part. How well Mr. Clinton sustained himself, can best be judged from his speech, which is embraced in the present collection, as is, also, that of his eloquent and more experienced opponent. Mr. Clinton remained in the Senate two years; but brief as his career was, he rendered services

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\* Life of De Witt Clinton by James Renwick, LL. D.

inferior to none of his associates, either in number or consequence. At the close of his senatorial term he returned to New York, and in 1803 was appointed mayor of that city.\* His mayoralty, by the just, fearless and unbiased character of his judicial decisions, and the constant activity he manifested to promote the welfare of the city, won the highest applause and confidence of the people. In 1812, opposing the war with Great Britain, he consented to become the candidate of the peace party for the presidency, in opposition to Mr. Madison.† The character of that political contest, which terminated in Mr. Clinton's defeat, is too familiar for particular notice in this place.

Mr. Clinton's mayoralty terminated in 1815. He had occupied that important post since his first election in 1803, with the exception of two terms, and at the same time, for many years, held a seat in the State Senate.

In the administration of his senatorial duties he was, in a high degree, distinguished for activity and statesmanlike capacity. Among his earliest acts was the advocacy of the system of free schools, the establishment of benevolent institutions for the sick, aged and indigent of his fellow-men, the tolerance of Roman Catholics, the defence of the New York harbor, besides many other measures calculated for the improvement, elevation, and general welfare of the people. In 1811 he was elected lieutenant-governor, and presided, with great dignity and credit, over the Senate, of which he had so long been a member.

He retired from public life in 1815. His attention was now turned to the subject of the Erie Canal, the plan of which had been projected in 1809, but delayed in consequence of the war with Great Britain. Mr. Clinton, associated with Gouverneur Morris, Stephen Van Rensselaer, Simeon De Witt, and others, was appointed, in 1809, a commissioner to examine and report the most feasible route for the great improvement. In 1816 their report was made, and, principally through the instrumentality of Mr. Clinton, an act was passed "to provide for the improvement of the internal navigation of the State." A new board of commissioners, of which Mr. Clinton was a member, was appointed, and immediately entered upon their duties. The next year plans and estimates of the work were laid before the legislature, and a law was passed, authorizing the canal, the cost of which was estimated at over five millions of dollars. The limits of this sketch will not allow of a particular recital of Mr. Clinton's services in this gigantic undertaking.

A short time after the passage of the canal bill, Mr. Clinton was elected governor of his native State, and continued in the gubernatorial chair until 1822, when he declined a re-election. As chief magistrate he displayed the energy and ability that characterized his former public career. He was strenuously devoted to the cause of internal improvement, to the extension of the benefits of education to all classes and conditions of men, and to other plans of reform, among which that for the inspection of wheat is not the least important. His speeches to the legislature not only evince the highest order of literary ability, but exhibit the soundest principles and the purest patriotism. After spending three years in retirement, he was again elected governor, and about the same time (1826), President Adams tendered him the mission to Great Britain. He declined the mission, preferring to remain in the service of his State.

Mr. Clinton's connection with the literary, scientific and historical institutions of the United States was extensive, and in each he manifested an active interest. "The documentary history of his life," says Tuckerman, in his admirable sketch, "bears ample evidence of his varied learning, his large discourse of reason, his broad views, and his unwearied activity. It comprises orations before philosophical and benevolent societies, speeches, reports, letters, journals, and messages to the legislature. It attests facility as a writer, versatile knowledge, and earnest-

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\* The office of mayor was at that time held by a commission from the Executive of the State, exercised under the construction of the constitution by the council of appointment. It was of much greater importance than it has possessed of late years. The mayor presided in the meetings of the Common Council, not yet divided into two chambers, and in this body he had a vote and a deliberative voice. A great number of valuable offices were in his direct gift; he was also the chief judge of the common pleas and of the criminal court, as well as the actual head of the city police. He was also ex-officio chairman of the board to which, with almost absolute power, the care of the public health was intrusted.—*Renwick*

† See the Life of Harrison Gray Otis, in the preceding pages of this volume.

ness of purpose, embracing discussions of questions of policy, data for the naturalist and historian, and systematic digests of studies in almost every department of scientific, literary, and political inquiry. Much of the significance of these papers is, however, lost, through the progress of events and the diffusion of knowledge. Orators have multiplied since his day, and many able legislators have won reputation in the same fields; yet these incidental writings are valuable for reference, and interesting as the literary exposition of a noble character. The Address before the Philosophical Society, the Discourse on the Iroquois, and the Letters of Hibernicus, are valuable illustrations of the habits of research, the intellectual tastes, the powers of observation, and the impressive style, of a man whose life was mainly occupied with executive duties, and whose fame is eminently that of a practical statesman. It is delightful to cite, after the lapse of fifty years, his eloquent defence of literature and science as elements of a wise policy,—to hear him glory in the memories of Hunter and Burnett, the educated provincial governors of his native State, advocate the need of a knowledge of the past, in order to reap the fruits of the present, and designate the advantages, both natural and civil, offered in this country to the votary of science and letters. It is equally pleasing to follow his ethnological investigations of the savage tribe that once possessed the fair domain around him, and to share the patriotic zest with which he examines its soil, forests, and waters, to fix the nomenclature of their varied products. He anticipated, by hints of projects such as De Foe's famous essay bequeathed to posterity, many of the subsequent victories of practical science, when he declared that "here the hand of art will change the face of the universe, and the prejudices of country will vanish before the talisman of merit;" that "it will not be debated whether hills shall be perforated, but whether the Alps and the Andes shall be levelled; not whether sterile fields shall be fertilized, but whether the deserts of Africa shall feel the power of cultivation; not whether rivers shall be joined, but whether the Caspian shall see the Mediterranean, and the waves of the Pacific shall lave the Atlantic shores."\*

During the summer of 1827, Mr. Clinton made a tour of the New England States, where he met with the heartiest welcome from the inhabitants, who honored him not only for the position he held as governor of the State of New York, but on account of his eminent, long-continued, and successful public services. Near the close of the same year, while residing at Albany, New York, he was seized with a disorder, so slight in its early stages, as to cause no anxiety, but which terminated his life, on the eleventh of February, 1828. His death produced the deepest sorrow among all classes of his fellow-citizens, and his memory continues to be cherished with growing esteem and respect.

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#### NAVIGATION OF THE MISSISSIPPI.

The following speech on the resolutions of Mr. Ross, relative to the navigation of the Mississippi river, was delivered by Mr. Clinton, in the Senate of the United States, on the twenty-third of February, 1803:†

MR. PRESIDENT,—The extraordinary manner in which the subject, now under consideration, has been introduced; the extraordinary manner in which it has been treated, and the extraordinary nature of the proposition itself, would justify a latitude and severity of remark, which,

however, I am not disposed to indulge upon this occasion. I know that I address myself to a very respectable portion of the collected wisdom and patriotism of my country: I will, therefore, leave the honorable members from Pennsylvania and Delaware, Mr. Ross and Mr. White, in the undisturbed possession of their inflammatory appeals and declamatory effusions, and will manifest a becoming respect for the high authority to which I have the honor to speak, by moving on the ground of argument and of fact. To prevent losing myself in so spacious a field, I will consider the subject under three distinct heads: first, the injuries alleged to have been committed on the part of Spain; second, the nature, character, and tendency of the remedy proposed; third, its justice and policy.

\* *Essays, Biographical and Critical; or, Studies of Character*, by Henry T. Tuckerman.

† See the speech of Gouverneur Morris, and note at page 475, ante.

The importance of a free navigation of the Mississippi has been duly appreciated by the government; and a constant eye has been kept upon it, in our negotiations with foreign powers. An attempt was, indeed, made, under the old confederation, to barter it away for twenty-five years, which, however, was efficiently controlled by the good sense and patriotism of the government. By the treaty of peace with Great Britain, in 1783, by the treaty of amity, commerce and navigation with her, in 1794, and by the treaty of friendship, limits and navigation with Spain, in 1795, the right of a free navigation of the Mississippi is recognized, and declared to exist, from its source to the ocean, in the citizens of the United States. By the twenty-second article of the treaty with Spain, it is declared, that "in consequence of the stipulations contained in the fourth article, his Catholic majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their merchandise and effects in the port of New Orleans, and to export them from thence without paying any other duty than a fair price for the hire of the stores. And his majesty promises either to continue this permission, if he finds, during that time, that it is not prejudicial to the interests of Spain, or if he should not agree to continue it there, he will assign to them, on another part of the banks of the Mississippi, an equivalent establishment." The twenty-second article, granting the right of deposit, is, therefore, founded upon the fourth article recognizing the right of free navigation, and is intended to give full and complete efficacy to it. By a proclamation of the Intendant of the province of Louisiana, dated the 16th of October last, the right of deposit is prohibited. The reason assigned for this daring interdiction is, that the three years, for which it was granted, having expired, it cannot be continued without an express order from the king of Spain. And, at the same time, no equivalent establishment is assigned according to the stipulations of the treaty.

There can be no doubt but that the suspension of the right of deposit at New Orleans, and the assignment of another place equally convenient, ought to have been contemporaneous and concurrent; that the conduct of the Intendant is an atrocious infraction of the treaty, and that it aims a deadly blow at the prosperity of the western States; but it is extremely questionable whether it was authorized by the government of Spain or not. On this subject I am free to declare, that I entertain great doubts, which can only be cleared up by the course of events, or perhaps it will ever be enveloped in darkness. On the one hand, the terms of the proclamation, indicating a misunderstanding of the treaty, the remonstrances of the governor of the province, whose authority does not extend to commercial and fiscal affairs, over which the Intendant has an exclusive control, and the prompt and decided assurances of the Spanish

minister near the United States, would induce a belief that the act of the Intendant was unauthorized. On the other hand, it cannot readily be believed that this officer would assume such an immense responsibility, and encounter an event so big with important consequences, not only to his country, but to himself, without knowing explicitly the intentions of his government. Such, then, is the true state of the Spanish aggression: an important right has been secured to our citizens by the solemnity of a treaty; this right has been withdrawn by an officer of the Spanish government, and whether this aggression was directed by it or not, is not as yet known. Other aggressions have, indeed, been stated by the honorable gentleman from Pennsylvania, Mr. Ross, in order to darken the picture, and with the manifest design of exasperating our feelings, inflaming our passions, and prompting an immediate appeal to the sword. That gentleman has mentioned, that great and unwarrantable spoliations have been committed upon our commerce by Spain, and that redress is refused. The depredations, previous to the treaty of 1795, were satisfactorily provided for in it, and those subsequent are in a favorable train of negotiation and adjustment. If it were permitted to me to draw aside the veil which covers our executive proceedings, I could establish, to the satisfaction of every person present, that the honorable mover has wandered widely from candor and the convictions of his own knowledge, in his representations on this subject. I will, at present, content myself with giving an unqualified contradiction to his declarations, and do cheerfully appeal to the information within the power of every member of the Senate, for the accuracy of my assertion. I am fully satisfied that the court of Madrid has not only entertained, but has manifested in her negotiations every disposition to maintain inviolate the relations of amity with this country. When, therefore, the honorable mover proceeded to state that several of our citizens had been seized and imprisoned by the colonial authorities of Spain, I might ask, whether any government in the world pretended to protect her citizens in the violation of the laws of other nations? Whether our citizens, in the situation he has represented, had not been concerned in illicit trade, and in violating the laws of the Spanish colonies? Instances may have indeed occurred, where innocent persons have been unjustly dealt with; and whenever representations to this effect shall be made to our government, I have no doubt but that ample redress will be instantly demanded and insisted upon. Nothing has been laid before us which can authorize the assertions made on this subject. Whenever such conduct shall be brought home to Spain, and prompt and complete satisfaction denied, I shall then consider it the duty of the government to vindicate the rights of our citizens at all hazards; and I cannot but congratulate the honorable mover, and the other side of the

House, on the resurrection of that ardent zeal in favor of their oppressed countrymen, which has so long and so soundly slept over British and French enormities.

As to the nature, character and tendency of the remedy proposed, there can be but one opinion. It proposes to enter the country of a foreign nation, with a hostile force, and to seize a part of its territory. It is not preceded by a formal declaration, and cannot, therefore, come under the denomination of a solemn war; but it partakes of the character of a war not solemn. It answers to the definition of war, by Burlamaqui, "a nation taking up arms with a view to decide a quarrel;" to that given by Vattel, who represents it to be, "that state in which a nation prosecutes its right by force." A state of general hostilities would as necessarily follow, as an effect would follow a cause: no nation would submit to the irruption of a hostile army, without repelling it by force: the proud Castilian, as described by the gentleman from Delaware, would revolt at the insult; the door of negotiation would be effectually closed, and as the appeal would be to arms, in the first instance, so the controversy must be finally decided by the preponderance of force. It would, therefore, not only have impressed me with a more favorable opinion of the honorable mover's candor, but also of his decision and energy as a statesman, if he had spoken out boldly, and declared his real object. War is unquestionably his design—his wish. Why then mask his propositions? Why then combine it with considerations connected with negotiation? Why not furnish the American people, at once, with the real and the whole project of himself and his friends? If it is bottomed on patriotism, and dictated by wisdom, it need not shrink from the touch of investigation; it will receive their approving voice, and be supported by all their force. The resolution is, then, to be considered as a war resolution; in no other light can it be viewed; in no other light ought it to be viewed; and in no other light will it be viewed by the intelligence of the country.

In this point of view, I will proceed to consider its justice and policy, its conformity with the law and usage of nations, and the substantial interests of this country.

I shall not attempt to occupy your attention by threadbare declamation upon the evils of war, by painting the calamities it inflicts upon the happiness of individuals, and the prosperity of nations. This terrible scourge of mankind, worse than the famine or pestilence, ought not to be resorted to, until every reasonable expedient has been adopted to avert it. When aggressions have been committed by the sovereign or representatives of the will of a nation, negotiation ought, in all cases, to be first tried, unless the rights of self-defence demand a contrary course. This is the practice of nations, and is enjoined by the unerring monitor which the God of nature has planted in every human bosom. What right have the rulers of nations

to unsheathe the sword of destruction, and to let loose the demon of desolation upon mankind, whenever caprice or pride, ambition or avarice, shall prescribe? And are there no fixed laws, founded in the nature of things, which ordain bounds to the fell spirit of revenge, the mad fury of domination, and the insatiable thirst of cupidity? Mankind have, not only in their individual character, but in their collective capacity as nations, recognized and avowed, in their opinions and actions, a system of laws calculated to produce the greatest happiness of the greatest number. And it may be safely asserted, that it is a fundamental article of this code, that a nation ought not to go to war, until it is evident that the injury committed is highly detrimental, and that it emanated from the will of the nation, charged with the aggression, either by an express authorization in the first instance, or by a recognition of it, when called upon for redress, and a refusal in both cases to give it. A demand of satisfaction ought to precede an appeal to arms, even when the injury is manifestly the act of the sovereign; and when it is the act of a private individual, it is not imputable to its nation, until its government is called upon to explain and redress, and refuses; because the evils of war are too heavy and serious to be incurred, without the most urgent necessity; because remonstrance and negotiation have often recalled an offending nation to a sense of justice, and a performance of right; because nations, like individuals, have their paroxysms of passion, and when reflection and reason resume their dominion, will extend that redress to the olive-branch, which their pride will not permit them to grant to the sword; because a nation is a moral person, and as such, is not chargeable with an offence committed by others, or where its will has not been consulted; the unauthorized conduct of individuals being never considered a just ground of hostility, until their sovereign refuses that reparation for which his right of controlling their actions, and of punishing their misconduct, necessarily renders him responsible. These opinions are sanctioned by the most approved elementary writers on the laws of nations. I shall quote the sentiments of some of them.

Vattel says: "Two things, therefore, are necessary to render it (an offensive war) just. First, a right to be asserted; that is, that a demand made on another nation be important and well grounded: second, that this reasonable demand cannot be obtained otherwise than by force of arms. Necessity alone warrants the use of force. It is a dangerous and terrible resource. Nature, the common parent of mankind, allows of it only in extremity, and when all others fail. It is doing wrong to a nation to make use of violence against it, before we know whether it be disposed to do us justice, or to refuse it. Those, who, without trying pacific measures, on the least motive run to arms, sufficiently show that justificative reasons, in their mouths, are only pretences; they eagerly seize

the opportunity of indulging their passions, and of gratifying their ambition, under some color of right." It is subsequently stated by this admired writer, that "it is demonstrated in the foregoing chapter, that, to take arms lawfully, first, that we have a just cause of complaint: second, that a reasonable satisfaction has been denied us, &c."

Burlamaqui says, "However just reason we may have to make war, yet as it inevitably brings along with it an incredible number of calamities, and often injustices, it is certain, that we ought not to proceed too easily to a dangerous extremity, which may, perhaps, prove fatal to the conqueror himself. The following are the measures which prudence directs sovereigns to observe in these circumstances: first, supposing the reason of the war is just in itself, yet the dispute ought to be about something of great consequence to us; since it is better even to relinquish part of our right, when the thing is not considerable, than to have recourse to arms to defend it. Second, we ought to have at least some probable appearance of success; for it would be a criminal temerity, and a real folly, wantonly to expose ourselves to certain destruction, and to run into a greater, in order to avoid a lesser evil. Lastly, there should be a real necessity for taking up arms; that is, we ought not to have recourse to force, but when we can employ no milder method of recovering our rights, or of defending ourselves from the evils with which we are menaced. These measures are agreeable not only to the principles of prudence, but also to the fundamental maxims of sociability, and the love of peace; maxims of no less force, with respect to nations, than individuals. By these a sovereign must, therefore, be necessarily directed; even the justice of the government obliges him to it, in consequence of the very nature and end of authority. For as he ought always to take particular care of the State, and of his subjects, consequently he should not expose them to all the evils with which war is attended, except in the last extremity, and when there is no other expedient left but that of arms." In addition to these great authorities, permit me to refer severally to the opinions of two more modern writers, Martens and Paley. The former says, that all amicable means for redress must be tried in vain, before an appeal to arms, unless it is evident that it would be useless to try such means: and the latter is of opinion, that the only justifying causes of war are deliberate invasions of right, and maintaining the balance of power. It is not necessary to decide upon the justice of the last observation, because it does not apply to the case before us. But can any man lay his hand upon his heart, and declare that he believes the present case a deliberate invasion of right by the Spanish government? Can any man say, that it would be fruitless to attempt amicable means of redress, and that the sword alone can restore us to our rights?

The opinions of these celebrated writers are

corroborated by the general usage of nations. A demand of redress, before the application of force, has been almost uniformly practised by the most barbarous, as well as the most civilized nations. Instances may indeed be found to the contrary, but they are to be considered as departures from established usage. The ancient Romans, who were a military nation, and who marched to empire through an ocean of blood, always demanded satisfaction from the offending nation before they proceeded to war, and fixed upon a certain time in which the demand was to be complied with; at the expiration of which, if redress was still withheld, they then endeavored to obtain it by force. It has been the general practice of the civilized nations of Europe to promulgate manifestoes justificatory of their conduct, in resorting to arms. These manifestoes contain a full statement of their wrongs, and almost always declare that they had previously endeavored by negotiation to obtain a friendly adjustment of their complaints. What is this, but a declaration, that the law and the sense of nations demand this course? What is it, but an appeal to the intuitive sense of right and wrong, which exists in every human bosom? The reign of the present king of Great Britain has been emphatically a war reign. In 1760 he ascended the throne and found the nation at war with France. Besides his wars in the East and West Indies, almost half of his reign has been consumed in wars with this country, and some of the nations of Europe. He has been three times at war with France, three times with Spain, twice with Holland, and once with the United States. The most strange events—events which have pleased and dazzled, astonished and terrified mankind, have passed upon the theatre of the world in his time. The ordinary maxims of policy, and the cardinal principles of action, have been reversed and prostrated. The world has seen the revival of the crusades, all the great powers of Europe in arms, and a destroying and desolating spirit go forth, unknown to past times. Portentous as a portion of this reign has been, when a deviation from the established laws of nations might naturally be expected, and degraded as the power and condition of Spain is represented to be, I am willing to stake the whole controversy upon the reciprocal conduct of these governments to each other. Of all wars, one with Spain is the most popular in England, from the opportunities it affords for maritime spoliation and lucrative enterprise. For the same reasons it is anxiously deprecated by Spain; and it has even grown into a Spanish proverb, "Peace with England, and war with the world." Notwithstanding the preponderating force of Great Britain, the allurements of popularity and cupidity, her great and extraordinary acquisition of maritime power, and the martial temper which has marked her character during the present reign—we find the very power with whom we are now called upon to measure swords, meeting her propositions for



negotiation or arms on the ground of perfect equality, maintaining a steady posture, and an erect attitude, passing through her collisions with unspotted reputation and unsullied dignity, and teaching us an instructive lesson, that while we ought never to bend into degrading compliances, we are not to expect that a nation, which has not yielded improperly to the power in the world most able to injure her, will tamely submit to the insulting and imperious measure recommended so earnestly to our adoption. Six controversies have occurred between Great Britain and Spain during the reign of the present king; three have terminated amicably by negotiation, and three have resulted in war. In 1761, when Great Britain was at war with France, a memorial was presented by the French ambassador at London to the English minister, which implicated some demands of Spain upon Great Britain, and which gave great offence to her ministry. A negotiation took place, which being attended with an insolent demand for a sight of a treaty concluded between France and Spain, and which being very properly refused, a war ensued. Notwithstanding the conduct of Great Britain in the course of this transaction was precipitate and unjust, negotiation was attempted before an appeal to arms: and the future disclosure of the real transaction furnished her with a salutary lesson; for it was afterwards found that the treaty did not refer to the existing state of the belligerent powers, but that the guarantee it contained was not to operate until the termination of the war.

In the year 1770, the remarkable case of the Falkland Islands occurred. Six years before, a settlement was made and a fort erected by the British government on one of them, with a view to accommodate navigators in refitting their ships and furnishing them with necessaries previous to their passage through the Straits of Magellan, or the doubling Cape Horn. This settlement gave great umbrage to Spain, not only on account of its interference with her claim of sovereignty to almost the whole southern continent of America, and the adjacent islands, but also on account of the facility it would afford, in case of a future war, to an attack upon her South Sea territories. Ineffectual remonstrances were made on the part of Spain, and at last, notwithstanding the claim of Great Britain by discovery and occupancy, an armed force was sent, the fort was taken, the settlement was broken up, and the honor of the British flag violated by the taking off of the rudder of a king's ship, and detaining it on shore twenty days. What course did the British pursue on this occasion? In this case the insult was flagrant; the honor of their flag, the dignity of the crown, and the commerce of the nation were implicated. Was the sword immediately unsheathed, and the door to peace effectually closed? No: negotiations ensued: a convention was formed. Spain disavowed the violence, and engaged to restore the possessions,

but with an express declaration, that the restitution should not affect the question concerning the prior right of sovereignty. The islands were also evacuated three years afterwards by Great Britain, in consequence of a secret agreement.

In 1779, Spain declared war against Great Britain, alleging unredressed depredations on her commerce, and that she was insulted in an attempt to negotiate between France and Great Britain. It is evident that this step on the part of Spain was in pursuance of the family compact; and was not justifiable by the laws of nations. It appears, however, that previous to taking this measure, she had attempted to attain her objects by negotiation.

In 1786, the long disputes, respecting the English settlements on the Mosquito shore and the coast of Honduras, were settled by negotiation. The English abandoned their Mosquito settlements, and many hundreds of families, who had inhabited them under the protection and faith of the British government, were peremptorily compelled to evacuate that country. The boundaries of the English Honduras settlements were enlarged, but in such a manner as to leave Spain in full possession of her territorial rights and exclusive dominion.

In 1790, the controversy about Nootka Sound arose. Two years before, a settlement was made there by an association of British merchants, on land purchased from the natives with a view to carry on the fur trade. This interfering with the chimerical rights of Spain, a Spanish frigate was despatched by the viceroy of Mexico, which seized the fort, and captured the English vessels trading there. A negotiation took place, the vessels were restored, and the settlements agreed to be yielded back: but there was an express reservation, on the part of Spain, of the right of sovereignty for ulterior discussion. In 1796, Spain, in pursuance of a treaty of alliance offensive and defensive with France, declared war against Great Britain.

From this short narrative it will appear, that in almost every case negotiation was attempted, even when indignity and violence had been committed; that in many instances it was successful; that in two of the three cases, where hostilities were commenced, Spain was unequivocally the aggressor; that in most of her adjustments she stood upon ground at least equal, and in some, superior to Great Britain; that in all of them she maintained a high sense of character and independence, and that, in points affecting the most delicate considerations of national honor, interest and right, and where occurrences of a very irritating nature had taken place, and more aggravated than the one of which we justly complain, the path of negotiation was deemed the path of honor by two of the great nations of Europe.

The practice of our government has been uniformly conformable with the principles I have endeavored to establish, and I trust I shall

be excused for bestowing particular consideration on this subject. We have heard much of the policy of Washington; it has been sounded in our ears from all quarters, and an honorable gentleman from Delaware, Mr. White, has triumphantly contrasted it with that adopted by the present administration. I am not disposed to censure it in this case; on the contrary, I think it a high and respectable authority: but let it be properly understood, in order to be rightly appreciated, and it will be found, that the United States, under his administration, and that of his successor, have received injuries more deleterious, insults more atrocious, and indignities more pointed than the present, and that the pacific measure of negotiation was preferred. If our national honor has survived the severe wounds it then received, it may surely outlive the comparatively slight attack now made upon it; but if its ghost only now remains to haunt the consciences of the honorable gentlemen, who were then in power, and who polluted their hands with the foul murder, let them not attempt to transfer the odium and the crime to those who had no hand in the guilty deed. They then stood high in the councils of their country; the reins of government were in their hands; and if the course they at that time pursued, was diametrically opposite to that they now urge for our adoption, what shall we say of their consistency? What will they say of it themselves? What will their country say of it? Will it be believed, that the tinkling sounds and professions of patriotism, which have been so vehemently pressed upon us, are the emanations of sincerity, or will they be set down to the account of juggling imposture? Although but an infant nation, our career has been eventful and interesting. We have already had very serious collisions with three of the most powerful nations of Europe, who are connected with us by treaty, by neighborhood, and by commerce. Great Britain, France and Spain, have successively committed very great aggressions upon our national rights. In stating these, I have no intention of reviving feelings which, I trust, have ceased with the causes which gave them birth, nor of aspersing the characters of nations who certainly hold the most important and respectable station in the civilized world. Our differences with Great Britain were coeval with the treaty of peace. The detention of the western posts was a direct violation of that treaty: it diverted a considerable portion of the fur trade from the United States, and disabled us from bridling the hostile Indians, which was a source of immense injury. This evil continued for twelve years, under every circumstance of aggravation and insult. British soldiers issued from those forts into parts of our territory, where we exercised jurisdiction, and seized the persons of deserters, without the aid or sanction of the authorities of the country; and these possessions served as asylums for the savages who were in hostile array against us, and as storehouses and magazines to supply

them with arms, ammunition and provisions. The seat of government of Upper Canada was also held for a time at Niagara, in the State of New York—an indignity of the most marked character. Many thousands of negroes were also carried off in violation of the treaty, and a very serious injury was thereby inflicted on the agricultural pursuits of our southern citizens. On the other hand, it was stated on the part of Great Britain, that the treaty was violated by the United States, for that impediments had been interposed against the recovery of British debts, by legislative acts and judicial decisions in several of the States. As there were mutual reclamations and reciprocal complaints, let us balance the account, and set off these grievances against each other: let us suppose that both parties acted right, and that no real cause of crimination existed, still I contend, that the conduct of Great Britain, independent of the inexecution of the treaty of peace, was much more aggravated than the case before us.

It is well known, that we were engaged in a bloody and expensive war with several of the Indian tribes; that two of our armies had been routed by them, and that we were finally compelled to make great efforts to turn the tide of victory. These Indians were encouraged and aided by the emissaries of Great Britain. British subjects were seen disguised, fighting in their ranks, and British agents were known to furnish them with provisions and the implements of war. The governor-general of Canada, a highly confidential and distinguished officer, delivered a speech to the seven nations of Lower Canada, exciting them to enmity against this country; but in order to furnish the savages at war with sufficient aid, a detachment of British troops penetrated into our territory and erected a fort on the Miami river. Here the Indians, dispersed and defeated by Wayne, took refuge, and were protected under the muzzles of British cannon. A violation of territory is one of the most flagrant injuries which can be offered to a nation, and would, in most cases, justify an immediate resort to arms, because, in most cases, essential to self-defence. Not content with exciting the savages of America against us, Great Britain extended her hostility to the eastern hemisphere, and let loose the barbarians of Africa upon us. A war existed at that time between Portugal and Algiers. The former blocked up the mouth of the Straits, by her superior naval force, and prevented the pirates from a communication with the Atlantic. Portugal has been for a long time subservient to the views of Great Britain: a peace was effected through the mediation of the latter: our unprotected merchantmen were then exposed, without defence, to the piracy of Algiers. Thus, in three quarters of the globe we at one time felt the effects of British enmity. In the mean time, our commerce in every sea was exposed to her rapacity. All France was declared in a state of siege, and the conveyance of provisions expressly interdicted.

to neutrals. Paper blockades were substituted for actual ones, and the staple commodities of our country lay perishing in our storehouses, or were captured on the ocean, and diverted from the lawful proprietors. Our seamen were pressed wherever found. Our protections were a subject of derision, and opposition to the imperious mandates of their haughty tyrants, was punished by famine or by stripes—by imprisonment or by the gibbet. To complete the full measure of our wrongs, the November orders of 1793 were issued; our ships were swept from the ocean, as if by the operation of enchantment; hundreds of them were captured; almost all our merchants were greatly injured, and many of them reduced to extreme poverty. These proceedings, without even a pretext, without the forms of justice, without the semblance of equity, were calculated to inflame every American feeling, and to nerve every American arm. Negotiation was, however, pursued; an envoy extraordinary, in every sense of the word, was sent to demand redress, and a treaty of amity, commerce, and navigation was formed and ratified. These events took place under the administration of Washington. The Spanish treaty, concluded on the 27th of October, 1795, stipulated for a settlement of boundaries, and an adjustment of spoliation on commerce, and contained a declaration of the free navigation of the Mississippi, and a grant of the privilege of deposit at New Orleans. This treaty, for more than two years afterwards, was not executed on the part of Spain. In January, 1798, a report was made to Mr. Adams, by Mr. Secretary Pickering, and submitted to Congress, which charged Spain with retaining her troops and garrisons within the United States, with evading to run the boundary line, with stopping, controlling and regulating the passage of our citizens on the Mississippi, and with sending emissaries among the Indians residing within our territories, in violation of the treaty and the relations of amity. Here, then, a treaty, securing the important benefit of deposit, was in a state of inexecution for a long period. Our citizens were also interrupted in the free navigation of the Mississippi; and other aggressions, affecting our territorial rights, and our internal peace, were superadded. Was it at that time proposed by the honorable gentlemen who were then in power, as it now is, when they are deprived of it, to seize New Orleans with an armed force? Were they then so feelingly alive to the wrongs of our western brethren? Did they manifest that irritable sensibility for national honor, which is now thundered in our ears with such extraordinary emphasis? If it is right for us to act now in the way they propose, what will excuse them for not pursuing the same system then? Was their political vision darkened by the eminence on which they stood? And does it require the ordeal of adversity to open their eyes to a true sense of their country's honor and interest? Let them answer to

their constituents, to their consciences, and to their God.

An amicable explanation was had with Spain, and our wrongs were satisfactorily redressed. This took place in the administration of Mr. Adams, and when most of the honorable gentlemen, who support this war resolution, except such as were dangling in the courts of Europe, held prominent stations in the councils of the country.

Our differences with France were of a more serious nature, and of a longer duration. They commenced in the administration of Mr. Washington, and were adjusted in that of his successor. Great and enormous depredations were committed upon our commerce by France, and our merchants were fraudulently robbed of compensation for provisions, supplied her in the hour of distress. The treaty and consular convention were violated. The right of embassy, a sacred right, respected even by the ferocious savage, was wantonly trampled upon; and the representative of our national sovereignty was refused a reception, and ignominiously ordered out of France. A fresh attempt at negotiation was made: three ministers were sent, armed with all the powers, and clothed with all the honors of diplomacy. They were also refused a hearing, and were forced to leave the country without experiencing the forms of common civility. The treaty was then annulled, and reprisals directed; and when the honorable gentlemen and their friends, then in power, had worked up the passions of the nation to the highest pitch of exasperation; when war, bloody war, was expected from all quarters; when the war-worn soldiers of the revolution were girding on their swords, and preparing to stand between their country and the danger that menaced her, the scene suddenly changed; the black cloud passed away; and we again beheld three ministers at Paris, extending the olive-branch, burying all animosities, and returning with a treaty of "firm, inviolable, and universal peace, and true and sincere friendship." I shall not press this subject any further upon the feelings of the honorable gentlemen: I read in their countenances the emotions they experience.

I have thus shown, that the course, recommended for our adoption, is not warranted by the laws and usage of nations, nor by the practice of our government. I shall now examine whether it is not repugnant to the best interests of the country.

A vast augmentation of our national debt would be the certain consequence of this measure. It is a moderate estimate to say, that our annual expenditures, over and above our surplus revenue, would be twenty millions of dollars; and we cannot reasonably expect that the war would continue a shorter period than five years. Hence one hundred millions would be added to our debt, and the great experiment, which we are now trying of extinguishing it in fourteen years, would certainly fail—an experiment,

which has been defeated in Europe by war and prodigality; and for the success of which, in this country, every friend of republican government looks up with the greatest anxiety. But this is not all; heavy and oppressive taxation would be necessary, in order to pay off the interest of the accumulating debt, and to meet the other exigencies of government. We are now a happy nation in this respect. Neither the temper nor the habits of our citizens will patiently submit to severe burdens, and happily the posture of our financial arrangements does not require them. Give the rein, however, to chimerical notions of war—embrace the proposition now submitted to us, and the weight of your impositions will be felt in every nerve and artery of our political system. Excises, taxes on houses and lands, will be reintroduced, and the evils of former administrations will be multiplied upon us. But the mischief will not stop here. With the increasing calls for money from the people, their means to satisfy them will be diminished. The superior naval force of the enemy would cripple our commerce in every quarter of the globe. Great Britain and Spain hold the keys of the Mediterranean. We should, therefore, be entirely shut out of that sea, unless we could persuade the former to unite her exertions with ours. With the decay of our commerce, with our exclusion from foreign markets, the labors of our farmers would be palsied, the skill of our manufacturers would be rendered useless, and, with the fruits of their industry perishing on their hands, or greatly undersold, how would they be able to meet the augmented wants of government? What, in the mean time, would become of the claim of our merchants upon Spain, for at least five millions of dollars, and to what perils would your commercial cities be exposed? These certain evils would be encountered, without producing the least benefit to our western brethren. The seizure of New Orleans would vest us with a place of deposit: but a place of deposit, without the free navigation of the Mississippi, would be entirely useless. As long as the enemy holds the country below New Orleans, and possesses a superior naval force, so long we will be excluded from the Mississippi. Suppose, however, this obstacle removed—suppose we are enabled to pass into the Gulf without molestation, is it not necessary for vessels to hug the island of Cuba, on their passage to the Atlantic States? And will not this expose them to certain capture, as long as Spain retains that important possession? To secure the great object, said to be aimed at by this resolution, and to establish beyond the reach of annoyance, a free communication between the Atlantic and western States, we must seize not only New Orleans, but the Floridas and Cuba; and we must immediately create a formidable navy. It is needless to mention that the Atlantic States are, with a few exceptions, the carriers of the western produce. Three-fourths of that trade is managed by the merchants of the State I have the honor to

represent. I therefore view this measure as pregnant with great mischief to the commerce of Atlantic America, and as a certain exclusion of the western States from market, as long as the war shall continue.

It is no slight objection in the minds of the sincere friends of republicanism, that this measure will have a tendency to disadjust the balance of our government, by strengthening the hands of the Executive, furnishing him with extensive patronage, investing him with great discretionary powers, and placing under his direction a large standing army. It is the inevitable consequence of war in free countries, that the power which wields the force, will rise above the power that expresses the will of the people. The State governments will also receive a severe shock; those stately pillars which support the magnificent dome of our national government, will totter under the increased weight of the superincumbent pressure. Nor will the waste of morals, the spirit of cupidity, the thirst of blood, and the general profligacy of manners, which will follow the introduction of this measure, be viewed by the great body of our citizens, without the most fearful anxiety, and the most heartfelt deprecation. And if there are any persons in this country, and I should regret if there are any such in this House, who think that a public debt is a public blessing, and that heavy taxation is expedient in order to produce industry; who believe that large standing armies are essential to maintain the energy, and that extensive patronage is indispensable to support the dignity of government; who suppose that frequent wars are necessary to animate the human character, and to call into action the dormant energies of our nature; who have been expelled from authority and power by the indignant voice of an offended country, and who repine and suffer at the great and unexampled prosperity which this country is rapidly attaining under other and better auspices—such men, whoever they are, and wherever they be, will rally round the proposition now before us, and will extol it to the heavens, as the model of the most profound policy, and as the offspring of the most exalted energy.

If I were called upon to prescribe a course of policy most important for this country to pursue, it would be to avoid European connections and wars. The time must arrive when we will have to contend with some of the great powers of Europe, but let that period be put off as long as possible. It is our interest and our duty to cultivate peace, with sincerity and good faith. As a young nation, pursuing industry in every channel, and adventuring commerce in every sea, it is highly important that we should not only have a pacific character, but that we should really deserve it. If we manifest an unwarrantable ambition, and a rage for conquest, we unite all the great powers of Europe against us. The security of all the European possessions in our vicinity, will eternally depend, not upon their strength, but upon our moderation and justice

Look at the Canadas: at the Spanish territories to the south; at the British, Spanish, French, Danish, and Dutch West India Islands, at the vast countries to the west, as far as where the Pacific rolls its waves. Consider well the eventual consequences that would result, if we were possessed by a spirit of conquest. Consider well the impression, which a manifestation of that spirit will make upon those who would be affected by it. If we are to rush at once into the territory of a neighboring nation, with fire and sword, for the misconduct of a subordinate officer, will not our national character be greatly injured? Will we not be classed with the robbers and destroyers of mankind? Will not the nations of Europe perceive in this conduct the germ of a lofty spirit, and an enterprising ambition, which will level them to the earth, when age has matured our strength, and expanded our powers of annoyance, unless they combine to cripple us in our infancy? May not the consequences be, that we must look out for a naval force to protect our commerce, that a close alliance will result, that we will be thrown at once into the ocean of European politics, where every wave that rolls, and every wind that blows, will agitate our bark? Is this a desirable state of things? Will the people of this country be seduced into it by all the colorings of rhetoric, and all the arts of sophistry—by vehement appeals to their pride, and artful addresses to their cupidity? No, sir. Three-fourths of the American people, I assert it boldly and without fear of contradiction, are opposed to this measure. And would you take up arms with a mill-stone hanging round your neck? How would you bear up, not only against the force of the enemy, but against the irresistible current of public opinion? The thing, sir, is impossible; the measure is worse than madness; it is wicked, beyond the powers of description.

It is in vain for the mover to oppose these weighty considerations, by menacing us with an insurrection of the western States, that may eventuate in their seizure of New Orleans without the authority of government; their throwing themselves into the arms of a foreign power, or in a dissolution of the Union. Such threats are doubly improper—improper as they respect the persons to whom they are addressed, because we are not to be terrified from the performance of our duty by menaces of any kind from whatever quarter they may proceed; and it is no less improper to represent our western brethren as a lawless, unprincipled banditti, who would at once release themselves from the wholesome restraints of law and order; forego the sweets of liberty; and either renounce the blessings of self-government, or like the Goths and Vandals, pour down with the irresistible force of a torrent upon the countries below, and carry havoc and desolation in their train. A separation by a mountain, and a different outlet into the Atlantic cannot create any natural collision between the Atlantic and western States: on the contrary, they are bound togeth-

er by a community of interests, and a similarity of language and manners; by the ties of consanguinity and friendship, and a sameness of principles. There is no reflecting and well-principled man in this country who can view the severance of the States without horror; and who does not consider it as a Pandora's box which will overwhelm us with every calamity: and it has struck me with not a little astonishment, that on the agitation of almost every great political question, we should be menaced with this evil. Last session, when a bill repealing a judiciary act was under consideration, we were told that the eastern States would withdraw themselves from the Union, if it should obtain; and we are now informed that if we do not accede to the proposition before us the western States will hoist the standard of revolt and dismember the empire. Sir, these threats are calculated to produce the evil they predict, and they may possibly approximate the spirit they pretend to warn us against; they are at all times unnecessary, at all times improper, at all times mischievous, and ought never to be mentioned within these walls. If there be a portion of the United States peculiarly attached to republican government and the present administration, I should select the western States as that portion. Since the recent elections there is not a single senator, or a single representative in Congress from that vast country unfriendly to the present order of things; and except in a part of the Mississippi Territory, (and its whole population did not by the last census reach nine thousand souls,) there is scarcely the appearance of opposition. To represent a people so republican, so enlightened, and so firm in their principles, as ready, without any adequate cause, (for no government could watch over their interests with more paternal solicitude than the present, upon the present question,) to violate their plighted faith and political integrity, to detach themselves from the government they love, and to throw themselves under the protection of nations whose political systems are entirely repugnant to their own, requires an extent of credulity rarely equalled, certainly never surpassed. If we examine the indications of public sentiment which have reached us, we see them breathing quite a contrary spirit. The legislatures of Kentucky and the Mississippi Territory have expressed full confidence in the conduct of the government, respecting the infraction of the treaty: Virginia, which embraces a respectable portion of western population, has done the same. The legislature of Tennessee has not been in session; but from the most recent and authentic accounts, we have every reason to believe that that State and the Indiana Territory are entirely satisfied with the position our government has taken. The infant State of Ohio has presented us with an address couched in the warmest terms of affectionate attachment, equally honorable to her and to us; and her recent elections have manifested the same decided spirit; out of forty-five members, returned to

her first legislature, there are only five to be found in the opposition. Pennsylvania is the only remaining State which possesses any western territory; and I need only refer you to her elections, to demonstrate the extraordinary attachment to the government, which prevails in that great and respectable State. In the next Congress there will not be a single member in opposition from Pennsylvania, and her State elections have been attended with nearly the same distinguished unanimity. Under the influence of such honorable principles, and under the auspices of the great character who so deservedly holds the reins of her government, and so extensively possesses the confidence of his fellow-citizens, we have nothing to apprehend, on her part, from the evils with which we have been so liberally menaced. Delaware, who has no western country, who carries on little or no trade with the western States, and who has no immediate interest in the present question, has indeed lifted up her voice against the measures of the general administration, and has demanded a more energetic course. I shall be the last man to speak disrespectfully of any of the State governments; I mean not to disparage the conduct of Delaware, and I trust I do not, when I say that New York, which has a greater interest in the Spanish infraction than any of the Atlantic States, is entitled to equal attention: and she has, through her legislature and executive, declared her warmest approbation of the course pursued by the general government on this interesting occasion.

It is equally in vain for the honorable mover to declare that the seizure of New Orleans will facilitate negotiation, and avert war; that we will lose our character if we do not; that delay will give Spain time to prepare; that our Executive has taken no course that we know of, and that the opposition will lend us their aid if we follow their advice. In opposition to these suggestions, we say that the seizure of New Orleans is war in fact, and will shut out negotiation; that character is to be lost, not by firm and honorable moderation, but by rash and boy-

ish precipitation; that delay is an evil that cannot be avoided, if we pursue the path of negotiation, which is the course our government has taken, and that if it gives our adversary time for preparation, it will also furnish us with the same advantage; that however desirable it may be to produce an union of sentiment and action among our fellow-citizens, we are certain that it will not result from the adoption of the present measure; that the great body of the people will consider it rash and unjust; and that in gaining the transient and doubtful support of a small minority, we will alienate the affections, and lose the confidence of our best friends, who will certainly desert us when we desert the laudable principles which ought alone to entitle us to their esteem and attachment.

If negotiation shall prove successful, and of this I have no doubt, all the evils resulting from war will be averted. If, on the contrary, it shall eventuate unfortunately, and we shall be compelled to face all consequences, and risk all dangers in the maintenance of our national honor and national rights, great and abundant advantages will still result from the pursuit of this course, and we will be enabled to appeal to the sword with a full conviction of the justice of our conduct, with the unanimous suffrage of our country, and to the perfect satisfaction of the world. In the mean time, we can form some necessary preparations, and we can ascertain the feelings and bearings of foreign governments. Every day of procrastination will find us better prepared, and will give us more people, more resources, more treasure, more force, with less debt. Our national character will stand high for moderation and justice; our own citizens and foreign nations will entertain but one opinion on the subject; and we can then confidently appeal to that great and good Being who holds in his hands the destiny of nations, to smile upon our cause; but, if in the inscrutable decrees of his providence it is ordained that we must perish, we will at least fall with dignity, and maintain our character, when we lose our existence.













